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A REPORT
OF
TRIALS
UNDER A
SPECIAL COMMISSION
FOR THE
COUNTY OF CLARE.

~~~~~  
HELD AT ENNIS, JANUARY 1848.  
~~~~~

By JOHN SIMPSON ARMSTRONG, Esq.,
Barrister-at-Law.

DUBLIN:
HODGES AND SMITH,
Booksellers to The Hon. Society of King's Inns,
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w. R. M. 12, 25.

Judges.

The Right Honorable FRANCIS BLACKBURNE, Lord Chief Justice.

The Right Honorable DAVID RICHARD PIGOT, Lord Chief Baron.

Counsel for the Crown.

The Right Honorable JAMES HENRY MONAHAN, Attorney-General.

JOHN HATCHELL, Esq., Q. C., Solicitor-General.

GEORGE BENNETT, Esq., Q. C.

The Honorable JOHN PLUNKET, Q. C.

Crown-Solicitor.

Sir MATHEW BARRINGTON, Bart.

Counsel for the Prisoners.

JAMES O'HEA, Esq.

Clerk of the Crown.

GEORGE SAMPSON, Esq.

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SPECIAL COMMISSION.

COUNTY OF CLARE.
SPECIAL COMMISSION.

First Day.

Ennis, Wednesday, January 12th 1848.

At a quarter past one o'clock, the Right Hon. the LORD CHIEF JUSTICE, and the Right Hon. the LORD CHIEF BARON, took their seats.

The following Gentlemen were then sworn to serve on the Grand Jury :—

SIR LUCIUS O'BRIEN, Bart., Foreman.

SIR HUGH DILLON MASSY, Bart.	CHARLES SYNGE.
SIR EDWARD FITZGERALD, Bart.	THOMAS DE CLARE STUDDERT.
CROFTON MOORE VANDELEUR.	JAMES BUTLER.
FRANCIS MACNAMARA.	GEORGE STUDDERT.
JOHN M'DONNELL.	WILLIAM HENRY BALL.
BINDON BLOOD.	FRANCIS JOHN FITZGERALD.
RICHARD JOHN STACKPOOLE.	WILLIAM MILLS MOLONY.
JAMES MOLONY.	MARCUS PATTERSON.
SIMON GEORGE PURDON.	PHILIP REID.
JOHN O'BRIEN.	FRANCIS GORE.
AUGUSTINE BUTLER.	WILLIAM BUTLER.

ROBERT STUDDERT, High Sheriff.

The LORD CHIEF BARON addressed them as follows :—

Sir Lucius O'Brien, and Gentlemen of the Grand Jury of the county of Clare, what you have just heard read by the officer of the Court has announced to you that those to whom the executive authority of this country has been entrusted have deemed it right to anticipate the ordinary visitation of the law at the Assizes, by issuing this Special

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SPECIAL COMMISSION.

Commission for the trial of offenders in certain districts in Ireland, including the county of Clare. Proceedings of this nature have become necessary from time to time. They are rendered necessary either by the multitude of offences, or by the magnitude and the atrocity of the crimes which are found to prevail. Such a proceeding is essential, with a view to those objects for which the tribunals of justice are called into their usual operation. It is right and just, if there are men charged with crime, to give to such of them as are innocent the opportunity of freeing themselves from unfounded accusation, and obtaining their restoration to their ordinary pursuits, and to the bosoms of their families and their friends. It is essential also where crime has reared its head, to bring at once in conflict with its perpetrators those powers of the law which are intended for the protection and repose of the whole community, in the exercise of which the portion of the community of which you form a part are called upon to assist in the administration of justice.

Gentlemen, we have been already engaged in proceedings under this Commission. We have had Sittings in a county adjoining yours; and I lament to say, that although many days were assigned for the performance of our duties in Limerick, these duties have not terminated, and we shall have to return to that county in order to try other prisoners. It adjoins your county, it forms a part of it, whatever may be the prescriptive boundaries which for public convenience, for the administration of justice, and for other local purposes, have been struck out; it constitutes, in truth, a part of that district, composed of portions of the same soil, and inhabited by portions of the same population; and I therefore feel bound to refer to some of the matters that appeared before us in the course of that Commission, as indicating the state of things which rendered it necessary to engage in these proceedings. Unhappily we have found in Limerick a state of things in which outrage has attained an extent of daring and atrocity which calls for the most vigorous administration of the law to suppress and crush it. Murders perpetrated, some of them under circumstances of the deepest atrocity, have appeared before us; attacks upon dwellings—

sometimes for purposes of intimidation—sometimes for purposes of plunder—sometimes accompanied by severe injuries to the inmates—sometimes followed, in the conflict that has ensued, by loss of life—all these have appeared before us. Highway robberies and attacks on dwelling-houses for the purpose of plunder are offences which, in ordinary times, have not, at least for some years past, been frequent in these districts; but outrage and crimes which have always a tendency to extend their operation have led to the perpetration of atrocities such as these.

The means by which these crimes have been committed require some observations and reflections, with a view to the state in which society is placed, and the necessity for vigorous measures for the suppression of those crimes, as much so almost as the nature of the atrocities themselves. In many instances—in a very great majority of instances—they are perpetrated not by isolated individuals; they are committed by armed bands assembled for the purpose of violating the law. In many instances they are perpetrated not under the cover of night, but sometimes in the open day, indicating that species of daring which too often arises from a sense of continued impunity. Such is the general nature of the crimes which have been brought under our observation in the course of proceedings which have been held in a neighbouring county. I lament to say, that there is but too much reason for believing that outrages, similar in character, if not equal in number, have been found to exist in the county to which you belong. It is a consolation, however, to consider, that they do not pervade the entire of your county; but when crime exists upon the confines of a county, it seldom fails to come beyond the portals. Whether it be from the contagion of crime itself, or from contiguity of the districts, or from causes similar, spontaneous and concurrent, existing in adjoining districts, it rarely happens that when a county circumstanced as Limerick is to yours is found affected and disgraced by crime, that the districts adjoining it are not subjected to similar crimes: and so it appears in this instance. The calendar submitted for our inspection shows a frightful picture of the state of certain

portions of this county ; the list I have before me to refer to, containing many cases of that species of crime, at the very mention of which we are prompted to recoil—the crime of wilful murder ! There are eight instances of the commission of that crime ; in seven of these instances the parties have been made amenable since last Assizes. The persons charged with this dreadful crime are numerous, and amount in number to two-and-twenty ! Akin to that crime is one which, according to the law of this country (to which I shall, before I close, have to call your attention) is punishable with death, as well as the crime of murder itself—that is, the crime of conspiring to murder. There are two cases in which this charge is preferred, and there are two individuals, one in each of these, charged with the perpetration of that crime. As regards the other classes of crimes, attacking dwelling-houses, robbery of arms, burglary and robbery, shooting at the person, assault and highway robbery, and other crimes committed through the instrumentality of arms, I find a list which shows but too clearly that at least those portions of Clare which adjoin the county of Limerick share in the outrages which unhappily disgrace that county.

Gentlemen, it appears to me unquestionable that many of these outrages have been applied for the direct purpose of controlling those who are in the enjoyment of property, in the exercise of the rights in relation to that property which the law has conferred upon them and sanctioned. It undoubtedly does appear that many of these outrages have their origin in transactions connected with land. If the evil stopped there, it would be in itself of magnitude sufficient to call for the application of all the powers of the State to put down a system by which the laws are violated in order to accomplish purposes which the law condemns ; and this not merely for the protection of the particular class that may be invaded, but for the protection of all classes of the community ; for if the rights of one class can be invaded and outraged with impunity, there is in truth an end of civil government and of social order. A state of things such as that involves in it the dissolution of all civil society, and the erection of a sway of anarchy and violence in substitution of the Government and the law. If, then,

as I have said, the evil were to stop there, and one class of the community alone at present were invaded by these outrages, it would be the duty of those charged with the administration of the law and the maintenance of the public peace—charged with the responsibility of providing for the safety of all classes, to arrest crime in the extent to which it has first made progress, even for the benefit of those who might afterwards become involved in consequences of more extended disorder. But, gentlemen, the evil does not stop there: it cannot, it never did, and it never will. The spirit which invades one class of the community will extend to the destruction of the rights and liberties of others. It is the character, the inseparable character of outrage, if unpunished, to become multiplied in the instances of crime, to extend the range of its operations. Yesterday, the landlord, the agent, the bailiff employed in the enforcement of his rights, the process-server in the execution of the process of the law, by which, according to law, those rights are enforced, may be the victim: to-day, the farmer, the person in humbler life, but who is an object of different passions, will become the victim too.

I have referred to the proceedings that have come judicially before us in the scene of our labours during the last week. They form an instructive illustration of the general truth that I have just now given utterance to; and if now called upon to point out that class in the community, that in the county of Limerick which we have just left—and, perhaps, from the similarity of cases in this calendar, I may extend my observations to the county of Clare—if, I say, I were to point out the classes in the community who are placed in the greatest risk, who are exposed to the greatest mischiefs, and for whom the protection afforded by the administration of the law is most needed, I would point to that large class in the community, that in their various gradations, from the wealthy occupiers to the person who supports himself by his industry with a small holding and with scanty capital—the farmers of the country, who, from their numbers, must constitute a large portion of the agrarian population, I would say that they are the classes possibly in the greatest risk, and in the most need of protection.

What were the instances presented before us with respect to this class in the county of Limerick? A farmer, sitting in his cottage with his family about him, is attacked; an assassin enters his cottage, he comes behind him and shoots him dead. That was the case of William Ryan, convicted of the murder of John Kelly. Again, a farmer retires to rest; his family, his wife and daughters, are reposing after the labours of the day; an armed banditti assail the house; they force their entrance; the owner of the house is hid in bed; they ask for money, they obtain it; they ask for arms, they obtain them; and when the means of defence are removed, they ask for the owner of the house: they drag him from the place of his concealment outside his own dwelling, and there they perpetrate his murder. For what provocation? For this: his servant was assaulted, and he summoned the assailant before the Bench of Magistrates. That was the crime for which he was doomed. In another instance, in the repose of night, and his family asleep, a farmer's dwelling is broken into, and an armed gang enter; his daughter is pulled out of bed by the hair of her head; she is taken, under circumstances of great suffering, for the purpose of forcing her into a marriage with a person beneath her in condition of life; fortunately, she is restored to her friends without personal injury. Could an atrocity of that character be perpetrated by an armed band, without disguise, and known to the inmates of the dwelling, if there were not a sense of something like impunity, arising from a belief that the prevalence of outrage would prevent detection and punishment? Farmers, again, have had their houses entered in their absence, and their property taken, not their arms merely, but money; and the system appears to have proceeded to such an extent that bands of armed marauders, visiting that class of the community, called upon them for contributions, and levied a nefarious impost for the purpose of aiding them in those crimes.

If these things are so, am I not right in saying, that these classes of the community are those who most need the protection of the law, and the co-operation of all for that purpose? You, and such as you, who reside in dwellings, and in places in which, from the characters

of your residences, and from your means of summoning around you your servants and dependants, can protect yourselves against such a state of things as this—and it is a dreadful state of society in which you are obliged to adopt precautions of that sort; but a farmer residing in a remote district can offer no resistance against numbers assailing him in arms; his protection can only be from the assertion of the supremacy of the law. When, therefore, I say, that the co-operation of all classes in society ought to be given in aid of the law, and for the suppression of outrage, I am not, I think, wrong in saying that there is no class in the community who ought to be more stimulated, not merely by a sense of duty, but by a sense of their own personal interest, to lend their co-operation, than those who belong to the class of farmers. It is impossible that crime could prevail to such an extent if that co-operation were given. It may be that it is in some instances withheld, from the influence of prevailing intimidation; it may be that in some instances it is withheld, from some lamentable and mistaken sympathies with the perpetrators of these crimes. One of the circumstances which appeared before us in Limerick, which has given me encouragement in hoping that these outrages may be put down by the administration of the law, with the co-operation of all classes in the community, is, that instances occurred of the courage, not merely the signal instance of courage with which some of the assailants were resisted, but the courage with which men came forward to appeal to the laws and prosecute the offenders to conviction: and I believe it at last will be found by that class of persons themselves that the mischief has gone too far; that it is necessary, that they as well as others should combine for its suppression, and that they are taught the salutary lesson, that by appealing to the laws of the land they will save themselves from this species of tyranny, and that their properties, their liberties, their families, themselves, all that society can present for the enjoyment of life, will be secured by giving to the law that co-operation which the law demands. It is not merely that such persons are prompted by their own personal interests to adopt this course—their own safety compels it.

Some instruction has been given of the danger of connivance at crime. In one case which was tried under this Commission in the county of Limerick, a man, himself a farmer, apparently of a respectable class, was tempted to harbour a felon when fleeing from justice. No reason, as far as appeared on the trial, existed for believing that he was engaged in the perpetration of the outrage for which that felon was convicted, and for which he is destined to lose his life ; but there is a provision of law, that he who, knowing the guilt of a felon, screens that felon and harbours him, is himself guilty of felony ; and if the crime of the person whom he harbours be murder, he is exposed to the risk of being separated from his family and home for the whole period of his life. The man of whom I speak, William Frewen, was convicted of that crime, and he is now on his way to the place where he will be separated for ever from those whom in this world he holds most dear, because he had not the courage to say no to the felon who, fleeing from justice, sought his protection. I trust that this may in itself operate as a warning to those who may be called upon or tempted to incur a similar risk ; and if they are asked by any person, however connected with them by any tie, even that of kindred, whom they know to be guilty of any of these atrocious crimes, they will answer him by saying, "I cannot incur the risk—I will not commit the crime lest I may share the fate of William Frewen." There is a provision of a recent Act of Parliament, an Act now in force in this county, under which, in certain districts proclaimed, facilities are given for the prosecution of those accessories after the fact to the crime of murder—that is, those who are guilty of concealing the person they know to be guilty of the offence. And though the principal in the original offence may not be convicted, and amenable to justice (which is usually required to prosecute the accessory), under this Act of Parliament, in the place I now address you, and in the districts surrounding proclaimed under the statute, although the principal felon may succeed in escaping from custody, he who harbours him may still be prosecuted, may still be convicted and transported.

Gentlemen, I have thought it my duty to make these general remarks on the state of crime, and the features which it exhibits, and to suggest the considerations which appear to me naturally to arise from what has occurred under our own observation. With the causes of this state of things, or with their remedies, we have nothing to do. Subjects such as these are not only not fit to be discussed here, but they are not fit to be considered. Our business is to deal with the administration of the law. We, in our respective spheres, are to concur in that administration, and to vigorously administer the law, but with mercy, which, after all, is part of its justice; and the result will be the restoration of tranquillity and peace.

Gentlemen, before I dismiss you, to attend to the discharge of your important duties, it may be right to call your attention shortly to some of the provisions of the Act of Parliament to which I have referred. It appears that many of the worst of the crimes, which we all so much deplore, have been committed through the instrumentality of fire-arms; by them these dreadful assassinations have been committed, of which you have heard so much. You are aware that, under the Whiteboy Act, where the country is in a state of disturbance, the appearing in arms is in itself a misdemeanour highly penal. Under the Act I am now referring to, the issuing of the proclamation in itself establishes that those districts are in that condition, to which at once by the mere issuing of it the provisions of the Whiteboy Acts apply; in addition to that, persons found carrying arms, and not licensed as this Act directs, are liable to be prosecuted for a misdemeanour, and subjected to a long imprisonment under that Act. The Lord Lieutenant has power to call in arms from those who live within specified distances, and after that demand has been made, the possession of arms under any circumstances, whether in the dwelling-house or out of it, becomes an offence punishable with severity under this Act of Parliament: this Act is now in full operation in parts of your county, and of course it will be the duty of most of you, gentlemen, if not all, intrusted in your various districts with the execution of the law in your position as magistrates, to apply the

provisions of this Act, and make amenable to law all those violating its provisions. There is another portion of the Act to which I would refer you, in order to point out some of the additional mischiefs that are the result of the continued perpetration of crime. Under this Act the Government have the power of imposing on the district that requires an augmentation of the police constabulary, such proportion of the expense of the establishment of that additional force as shall be deemed advisable: thus imposing on the district a penalty for its own crime.

I will not detain you with referring to certain other provisions of the law, with a view to its general administration. In the address of the Lord Chief Justice, with which few of the class I am now addressing are not acquainted, he has alluded much in detail to this Act of Parliament; it suggests to me, however, one matter to which it is necessary I should point your attention, because I find in the calendar two persons charged with the commission of an offence which is sometimes, though not often, the subject of investigation in Courts of Justice—the offence to which I allude is the offence of conspiring or soliciting to murder. Some persons may be under the impression that the provisions of the law with reference to this crime were of an antiquated character, and not recently brought into force. That is a great mistake. These provisions, it is my duty to apprise you, have been long the law of Ireland; and in the year 1829, when the 10th G. 4, c. 34, was passed, repealing a great number of statutes constituting the criminal code, with a view to consolidating that code, the provisions of the Act which related to the offence on which I am commenting were re-enacted—the words of the statute being to this effect, “That all persons conspiring, confederating and agreeing to murder any person shall be guilty of felony, and being convicted thereof, shall suffer death as felons; and be it enacted, that every person who shall solicit, encourage, persuade or endeavour to persuade, or who shall propose to any person to murder any other person, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.” So that the act of conspiring or soliciting a

person to become an assassin is punishable by the law of this country with death, as if that person had committed the crime of murder. In England the law is not so severe; possibly from the circumstances of this country, the Legislature has thought fit to continue that enactment. And recently, when a great variety of offences punishable with death hitherto were, by a statute passed in the first year of her present Majesty, c. 85, visited only with transportation, this part of the code remained, and we must consider deliberately remained. It is an offence, in the investigation of which, in reference to the particular individual charged, great caution and care are required. It is an offence committed in secret, and the means of proof are, of course, not so abundant; but still it is an offence of a most atrocious character—an offence for which the law has enacted the punishment of death, and for which there was a recent conviction in a neighbouring county.

Gentlemen, I have only to say, in reference to your general duties, you are fully aware of them, from your own experience as grand jurors. You know it is the duty of those who discharge such functions to inquire carefully into the evidence on which the accusation is made, and if it be evidence of a *primâ facie* case, if uncontradicted, it will be your duty to send the case for investigation to a petty jury; and otherwise, you will, of course, ignore the bills.

The Grand Jury then retired, and found several bills.

Several prisoners were arraigned, and the Court adjourned at half-past five o'clock.

Thursday, January 13.

Second Day.

TRIAL OF JAMES HAYES AND PATRICK RYAN,

FOR THE MURDER OF JAMES WATSON.

The Judges took their seats at half-past eleven o'clock.

James Hayes and *Patrick Ryan* were then placed at the bar.

The prisoners being asked if they would join in their challenges—

Mr. *O'Hea*, as Counsel on their behalf, stated that he did not wish to put the Crown to inconvenience ; and if they allowed the prisoners the power of challenging thirty, they would join in their challenges ; and if a sufficient number of jurors did not appear, he would not object to a jury being sworn.

This was objected to by the Counsel for the Crown ; but subsequently they consented to allow twenty-three challenges.

The panel was then called, and the prisoners having challenged ten, one of the answering jurors, having objected to serve, was set aside by the Crown.

The following jury were sworn:—

John Singleton.

Strettel Scott.

Ralph Westropp.

James O'Dwyer.

James Blake Butler.

Hewitt Bridgeman.

David John Wilson.

Alexander Bannatyne.

Mathew Canny.

Frederick Blood.

Willam Arthur.

John Macbeth.

The prisoners were then given in charge on an indictment for the wilful murder of James Watson, on the 17th of May 1847, at Ballycorney in the county of Clare.

The first count charged that one Willam Ryan did strike the said James Watson on the right side of his head with a gun, thereby giving him mortal wounds of which he died, and that the prisoners were present feloniously aiding and abetting.

The second count charged that the murder was committed by casting him on the ground, and that the prisoners were present feloniously aiding and abetting.

The *Attorney-General* stated the case for the Crown.

Gentlemen of the Jury, it is one of the undoubted rights of the Crown, in cases in which, from the enormity of the crimes, or from the nature of the offences which may have been committed in any district, to call upon a jury to assemble at a period of the year different from that upon which they are usually called upon to discharge the criminal business of their county. Unfortunately, the enormity of some of the crimes, with which a portion of your county has been disgraced, and the nature of those offences, have rendered it not merely necessary, but actually indispensable, that you should be called upon at this period of the year to discharge one of the most important duties that members of the community could be called upon to discharge. For a considerable time, a portion of this county has been disgraced with murders of a revolting description; one of which you are now about to take into your consideration. Several outrages have also been committed, and it does appear that most of them have been more or less the result of a combination that existed connected some way or other with the possession of land.

Gentlemen of the Jury, in the present instance the prisoners at the bar stand charged with the murder of Mr. James Watson. Mr. Watson had been agent to Mr. Arthur, a gentleman of considerable property in your county; as such agent it was his duty to collect and enforce the payment of rent due to Mr. Arthur. It will appear that a person named Crowe held a farm from Mr. Arthur, and that in consequence of the rent being in arrear, it became necessary to distrain the lands. In consequence of this, Crowe, having entertained a feeling of hostility and ill-will towards Mr. Watson, was induced to hire and instigate these two men, and a person named William Ryan, to perpetrate the murder which you are now called upon to investigate.

Gentlemen of the Jury, it will appear in evidence, that on the day in question these two persons, accompanied by a third, were seen coming from the direction in which Crowe's house was placed, towards the scene of the murder. Crowe's house is so situated, that a view could be had from it of Mr. Watson's residence, and of the house of Mr. Arthur. Mr. Watson was frequently in the habit, when engaged in the discharge of his duties, of going from his own house to that of Mr. Arthur. On the day in question he was proceeding on horseback

towards Mr. Arthur's residence, and shortly after he left his own house three persons were seen coming across a field from the direction in which Crowe's house lay, as if for the purpose of meeting him. Evidence will be laid before you which will probably lead you to the conclusion that the prisoners at the bar were two of those men, and that the third was William Ryan, whom it is now unnecessary to try. It will appear, that before they came to the road they separated, only two of them coming out on the road. Those two proceeded in the direction in which Mr. Watson was coming, and contrived that one should be before and the other behind him. Mr. Watson, on seeing them, immediately suspected their object, and endeavoured to return to his own house, but one of those men stopped his horse. Mr. Watson was armed, and discharged a pistol, which wounded one of them slightly. Immediately after the discharge, these two men attacked him and beat him in a most brutal manner, inflicting wounds and injuries upon him of which, after lingering for a few days, he died. They were then joined by the third man, who had been keeping watch.

Gentlemen of the Jury, you will have to try whether or not the prisoners at the bar were two of the three persons present on that occasion. If you come to that conclusion, you can have no doubt of their guilt, and that they were all there for the one object. The gun with which the outrage was perpetrated was actually broken on this unfortunate gentleman, and was seen in the hand of one of the parties returning from the scene of this foul deed.

Gentlemen of the Jury, it is almost unnecessary to detail at greater length the facts of this case, which shall be laid before you fully in evidence. I merely stated them thus shortly, in order to enable you to understand the case as it proceeds.

FIRST WITNESS.

Denis Flynn sworn.—Examined by the *Solicitor-General*.

I am the son of Laurence Flynn. I knew the late Mr. Watson of Millbrook. My father's house is near to where Mr. Watson lived in May last. It is situated on the townland of Ross. I was not at home at the time Mr. Watson was killed, but was standing outside the door, facing into the house, when I heard a noise on the road. I then ran out, and when coming towards the gateway I heard a shot. When I got to the gate, I saw three men, two of them standing and one down. I saw a gun in one man's hand. He appeared as if drawing a blow at the man who was down, but I cannot say that I saw him strike him. I was then about twenty yards from them. I was facing

towards Ballycorney mill, when I saw the men. I ran smartly away from them, in the direction of Ballycorney. Ballycorney is Mr. Watson's place. I did not face directly towards Ballycorney mill. It is lower down than where I was going. I did not go on the lands of Ballycorney at all. I was on the lands of Ross. I met my brother before I came to the mill. When I met him I returned back to where the man was lying. I do not know whether my brother came back with me. I did not look behind me. When I came back I knew Mr. Watson for the first time. I do not know how far I ran before I returned back. I found Mr. Watson lying on the road, about twenty yards from the gateway leading to my own house. He was snoring in blood. His hat was off. I saw his horse grazing on a ridge, a piece up from him. At this time I saw some persons coming up the road. How long was it between the time you first left the gate and returned back?—I do not know, I had no clock. About how long, or how far had you gone?—I think, to the best of my belief, I was running it about five minutes. I was frightened. When I came back, there was a car or two coming up the road, and some men. I beckoned to them. I do not know who they were. I saw a man named James Lacy there. I did not take heed of any of the other men. The men were coming down the road from the direction of the school-house. The body lay between the gate of my house and the school-house, but a great deal nearer to my gate. Lacy took Mr. Watson under the arm, and raised him up. I then took him under the other arm. Men then came running up in several directions, and took him from us. I then ran down to Mr. Watson's house, and told his servant boy what had occurred. When I came back Mr. Watson was in Walsh's house. I am not sure whether he was in the house or in the yard. How far was this from Mr. Watson's house?—I cannot say. How far by the road is it from his gate to your father's house; you need not be particular?—I would wish to be particular.

A Juror.—Was the body lying in the same place the second time you saw it, as the first?—I do not exactly know. I know it was not far from it.

To the *Solicitor-General.*—I showed the place to a person surveying. I saw him there with Mr. Brown. I pointed out to him the place where the body lay, and the gate leading to my father's house. Did you state to him, as accurately as you recollected, the place you now described?—I did; but he did not ask me as many questions as you have asked me.

To the CHIEF JUSTICE.—There was no person with the body when I returned the second time.

To a *Juror*.—I did not know Mr. Watson the first time.

Mr. *O'Hea*.—Did you know him before?—I did well.

This witness was not cross-examined.

SECOND WITNESS.

John Leslie Worrall sworn.—Examined by Mr. *Bennett*.

I am a surveyor. I made a map of the ground and the country adjoining the place where the murder was committed.—[A map was then handed to witness, and he pointed out on it the various places named by the last witness, Flynn's house, the school-house, Crowe's house, and other places.]—I never was there before. Mr. Arthur's house is not on the map. The places marked on the map were pointed out to me by a man named Lacy, and a boy named Barton, and James Crowe.

THIRD WITNESS.

Nathaniel Barton (a boy about ten years of age) sworn.—Examined by Mr. *Bennett*.

I do not know how old I am. In May last I lived in Ballycorney. My father is dead. I live with my mother. I go to the National School. I remember the day Mr. Watson was killed. I went to school on that day. I remember being called out of school by another boy. I had eat my breakfast at the time. I think it was between nine and ten o'clock. When I went out I saw two men. Did you know either of them?—I did. I knew one of them, his name was Hayes. Do you see him here?—[Witness looked round the Court and did not reply to this question.]—Do you see the men standing up near you in the dock?—I do. Is either of those the man you saw on that day?—No. I do not know either of the prisoners. Did you ever see either of those men before?—No; I did not. Did you ever see either of those men before in your life?—I do not think I did. Do you know Mr. Brown the magistrate?—I do. Did you ever see a man named Hayes when you were with him?—I did, in Limerick. Was the man you saw in Limerick the same you saw on the day of the murder?—He was. How many men were with him in Limerick?—Six or seven. Did you point him out to Mr. Brown?—I did. Was the man you showed Mr. Brown one of the two men you saw on that day?—He was,

indeed. Did you know his name then?—I did not know it until Mr. Brown asked his name. What did you say to Mr. Brown?—I pointed out to him the man I saw the morning Mr. Watson was killed. I did not know his name then. He was brought to the place where I was. Mr. Brown asked him his name, and he said it was Hayes. That was after I had pointed him out to Mr. Brown. Are you sure that was the man you saw the day Mr. Watson was killed?—I am sure; indeed it was he. How many men did you see on the day of the murder?—Two. I saw them coming down a small road leading to where Mr. Watson was killed. Was there any boy with you then?—No. Did you see a boy named William Crowe there?—He was in the school-house at this time. The man next me had a gun. Was that the man you pointed out to Mr. Brown?—It was. What was he doing with the gun?—He was putting the barrel under his trousers and the stock under his arm.

The CHIEF JUSTICE.—Was the man you then saw the same person you pointed out to Mr. Brown?—He was.

To Mr. *Bennett*.—I did not take notice of the other man. They were walking close side by side. The man who had the gun was at my side. How far was he from you?—I do not know. Point out how far.—It was farther than the end of the Court. It was not twice as far. They were coming down a small road from Mr. Wilkinson's. I know James Crowe's house. I know the boreen that leads from his house to the school. They were on that road. They came down from that road, and went down towards where Mr. Watson was killed. They came down the boreen to the high-road, and then turned down towards where Mr. Watson was killed. I know Flynn's house. They were going towards that. They were going down the straight road towards Flynn's house. That was the day Mr. Watson was murdered. It was before he was murdered. What did you do then? I turned back to the school-house, and before I reached it I heard a shot. Was that soon after you saw them go up the road?—It was. Was Crowe in the school-house then?—I did not go into the school-house. When I heard the shot, I went towards where I heard it. Did you see William Crowe?—I did. Where was he?—He was in the school-house. Did he come out of the school-house?—No. Did you see him at all?—I did. When I heard the shot I went in the direction where I heard it towards Mr. Watson's house. I went on the road until I saw Mr. Watson. I saw them taking him into Walsh's house.

I saw them raising him up off the road, and taking him into Walsh's house. Thady Keogh, Larry Flynn and Dan Keogh were there. Did you see Mr. Watson so as to know it was he?—I did. He was then alive. I went into Walsh's house. I stayed there until Mrs. Watson and her servant girl came up. I then went home and told my mamma. Did you see either of the men after you heard the shot?—No, I did not.

Cross-examined by Mr. *O'Hea*.

I was at school that morning. I saw all the boys. There was but one boy of the name of Crowe at school; his name was William. There was a sister of his at school. I do not know how old he is. He is taller than I am. When you came out on the road, and the man passed down the boreen, did you go into the boreen?—No, I did not. You only saw them from the road?—Yes. Was there a ditch between you?—Yes. Were there two ditches?—No; only one. Was William Crowe with you?—No; I left him in the school. When you saw the men go away, you faced back?—I did. William Crowe was not then out. Were you brought into the Court-house to-day before?—No. Are you certain it was the upper part of the gun the man was putting to his shoulder, and the barrel below?—It was. I know John Crowe and James Crowe. When I was standing on the road, I did not see either of them.

To Mr. *Bennett*.—The ditch I spoke of was the ditch of the boreen. It was near to me. I could see the men over it. I could see them plainly.

A Juror.—Were you standing nearer to Flynn's house or the school-house?—I was nearer Flynn's house. Why did you leave school?—Young Powell came in, and said the Terrys were coming down from his aunt's with guns, and to go out and we would see them. Powell was one of the boys of the school. He was coming into the house at the time he said it. I knew one of the men; his name was Hayes.

CHIEF JUSTICE.—Did you ever see him before?—No; I never did. Never to the best of my recollection.

A Juror.—How did you know him?—On account of his having the gun, I looked sharp at him. I never saw him before. Did any of the other boys leave the school but you?—No. Did Powell tell it to

all the boys?—He did. Did the men see you?—When coming down the breen they saw me plainly. How many yards were you from them?—I do not know. I have good sight. There was a great many men about Mr. Watson.

CHIEF BARON.—How high was the ditch that was between you and the men?—I do not know. Was it as high as yourself?—It was not. Could you see over it?—I could, plainly.

To Mr. *Bennett*.—I pointed out this place to the surveyor.

To a *Juror*.—I did not see Denis Flynn there, but I saw his brother. Did the man stand when he was putting the gun as you have described?—No; he was walking on. The man who had the gun wore a short coat, whitish trousers, a black cap, a whitish coat, and the trousers were like corduroy; he had fair hair.

FOURTH WITNESS.

James Lacy sworn.—Examined by Mr. *Plunket*.

I recollect the day Mr. Watson was killed. I know where the National School-house is. It is near to where Mr. Watson was killed. I lived at that time between the school-house and the place where Mr. Watson was killed. At that time I lived with my father-in-law in the lodge of the Glebe. My father-in-law's name is Thomas Hogan. I was going after my breakfast to my work, between ten and eleven o'clock. My usual breakfast hour was nine o'clock, but I was delayed until ten, until some of the men returned from their breakfast. When I went out I saw two men coming up the road, from the direction of the place where Mr. Watson was killed. The men were facing the school-house. One of them had the barrel of a gun in his hand. They were coming towards me. The gun had no stock. I could not see a stock. This was after Mr. Watson had been murdered. Did they pass you on the high road?—No; they turned into a field at the opposite side from my lodge. It was a grazing field. Did you see where they went?—I did not; they had gone about two or three perches when a man joined them. He walked across the field towards them. As if to meet them?—Yes; he came across to them. Do you know any of the men you saw on the road?—I do; one of them was Ryan (Small). I did not know the other at the present time, but was pointed him out after.—[The witness identified the prisoner Ryan (Small).]—He had the barrel of the gun.—[Witness identified the other prisoner.]

CHIEF JUSTICE.—What do you say of the other man?—The other prisoner was the man who met the other two. I did not know the other man's name at the time ; I afterwards heard it was Ryan (Puck). James Hayes is the man who came across the field to meet the other two. Did you know both the prisoners before?—I did. The man you did not know was the man not in the dock?—Yes.

To Mr. *Plunket*.—I was going down the ditch towards my work when young Flynn called me, and I found Mr. Watson on the road, and the stock of the gun under him. The stock was broke off the barrel. The barrel was not there.

Cross-examined by Mr. *O'Hea*.

Is there any charge against yourself?—I don't know that there is ; if there is it is unknown to me ; I never was keeping out of the way. Were you ever charged with this act, or did they suspect you for it?—I do not think they did. Were you taken up by the police?—I was. I cannot say how soon after the murder, but it was soon. I could not say it was more than a week. Was it after you were taken up you stated what you now state?—Certainly it was. I cannot say how soon after ; I kept no account of it. I saw the magistrate more than once before I told this. I did not go to Limerick more than once before I told it. I told it to Mr. Brown in Limerick. I was not then in custody. The police never asked me to make disclosures, unless at the time Mr. Watson was beaten. The police asked me did I know any of the persons who beat him. I said I did not. Did you go to Mr. Brown more than once?—No ; the day I was taken, I was brought before him. I did not then tell him, but the second time I was brought before him I told him. I have often been in Limerick ; I went there on my own business. I went there more than once since Mr. Watson was killed. I went there for meal. Is there no person who sells meal nearer than Limerick?—Yes, there is one or two. I met Mr. Brown in Limerick. Did you tell him that?—No, I did not. Did you speak to him?—Yes. My father had a spot of land on Mr. Arthur's estate ; I asked him to get it for me. It was after I made the disclosures that I asked for the land ; but I did not get it. I was arrested in my father-in-law's house. Did you swear to-day that the two men who came to meet you were Ryan (Small) and Ryan (Puck), and that the third man who met them was Hayes?—I did.

Mr. *O'Hea* read the information of witness, bearing date the 11th of August 1847, which is as follows:—

“I remember the day the late James Watson of Millbrook was murdered, but I do not recollect the day of the month. I came out of my house to return to my work after eating my breakfast, when on the road, two men came up the road against me, from the direction of Mr. Watson's place; I know them; their names are, James Hayes, commonly called Butt Hayes, and Patrick Ryan, called Ryan (Small). They were walking very fast, and appeared in a hurry. Ryan (Small) had the barrel of a gun, and part of the stock attached to it, in his hand. The butt-end of the stock appeared to have been broken off. I went on a piece of the road to my work, on towards Mr. Watson's house; after going on a little distance, I saw Flynn's son beckoning to me. I went down to him, and saw Mr. Watson lying on the road bleeding, and cut about the head. He was speechless. I saw the broken butt of the stock of a gun on the road, near where Mr. Watson was lying. I assisted to take Mr. Watson into Walsh's house, and from that to his own.”

Now who were the two men came up against you?—The two men were Ryan (Puck) and Ryan (Small). How came you to swear that one of them was Hayes?—I did not; if it was in the information, it was the mistake of the magistrate, not mine.

A Juror.—Why did you not give information the day of the murder?—Because I did not think well of it.

FIFTH WITNESS.

James Crowe sworn.—Examined by the *Attorney-General*.

I know John Crowe of Knockaderreen; he is my uncle. I recollect the time Mr. Watson was killed. I lived in Lackareigh at that time. It is not half a mile from my uncle's house. I know William Ryan (Puck) and Patrick Ryan (Small). I knew them about a couple of months before Mr. Watson was killed. Did you ever see them together before Mr. Watson was killed, in your uncle's house?—I did. I saw them a good start before at my uncle's house; the last time I saw them there was about a fortnight or three weeks before he was killed. I was on the road the morning he was killed.—[Witness identified the prisoners.]—I knew both those men the time Mr. Watson was killed. I knew Hayes twelve months and more; I knew his name at that time; he lives about six or seven miles from me. I saw the prisoners the morning Mr. Watson was killed. William Ryan

(Puck) was with them. I saw them coming down the road from towards Knockaderreen, towards the high road to Barnadereen. Was it a boreen, or a road?—There was a road there since I remember. That road led from my uncle's house down to the road that led to the back of the school-house. I was standing at the minister's gate, Mr. Stawell's. I was quite close to the boreen. I first saw the three men upon the hill above the car road leading to Thady Keogh's house. At that time they were not near enough for me to know them. Were they coming towards you?—They did not come towards me at all. I lost sight of them. There is a hollow in the ground where I lost sight of them. After I lost sight of them, I saw Mr. Watson; he was riding up the road above Larry Flynn's house. Had you then left the place you were first in?—When I lost sight of the men I went to Patrick Flynn's boreen. When you got there could you see the road leading to Mr. Watson's house?—I could. I saw him riding on that road towards where I was. He was about thirty or forty yards from me. He was walking his horse. I next saw William Ryan (Puck); he jumped over Larry Flynn's ditch, and I saw him cock a gun at Mr. Watson. He was distant from Mr. Watson at the time about the cross of the table. He did not fire the gun at that time, but he presented it at Mr. Watson. When the gun was presented at Mr. Watson, he turned back his horse and rode towards home. He only went near the end of Pat Walsh's wheaten field. When I saw Patrick Ryan (Small) jump out of Pat Walsh's field he had a pistol in his hand. He took the horse by the bridle, the horse took a couple of springs, he doubled him round and Mr. Watson fell off the horse. When he was down, Ryan (Puck) came over him and Mr. Watson fired a shot at him. Ryan (Puck) then struck him on the head with the butt of a gun. Ryan (Small) struck him with a pistol; and Mr. Watson cried out for mercy. Ryan (Puck) struck him a second time with the butt of the gun and broke it on him. They both then run away together to Keogh's bog. I crossed over the ditch. I saw no other person until they went to Keogh's bog. From the time you saw the three men disappear until you saw Mr. Watson did you see Hayes?—Not at that time. I saw him when they came back, up in Keogh's bog, he was standing on the ditch. Where were the other two at that time?—They were killing Mr. Watson. Did you see him the time they were killing Mr. Watson?—Not until after they went away. I came up into Pat Walsh's field, and Hayes was standing there. The two Ryans went off up Keogh's field towards Ballymolony wood, and Hayes went a couple of fields with

them. Hayes had either a gun or a blunderbuss in his hand. Had he it the first time you saw them?—I did not see it, he was too far from me. From the place where Hayes was standing could you see the place where Mr. Watson was murdered?—You could not. Could you see any part of the road down which Mr. Watson came to that place?—You could not. Hayes was about half a quarter of a mile from the place of the murder. I pointed out to the surveyor the place where Hayes was standing. How soon after Mr. Watson was killed did you see Hayes in that place?—He was not killed five minutes. How far did they go together before they separated?—About the cross of a field. Hayes was standing down by the side of a ditch. It was not a high ditch. It was as high as myself.

The CHIEF JUSTICE.—Was he standing in such a way as to conceal himself?—He was not.—[The witness again indentified the prisoners James Hayes and Patrick Ryan (Small).]

Cross-examined by Mr. O'Hea.

You told this at once?—No. You told it near Christmas?—I did. What took you out that morning?—To walk about. To amuse yourself I suppose?—Just so. I had no particular amusement. When were you at school?—Not for two years. Were you at work?—Not since the Board of Works. Since then I have been on my own resources. Did you see the boy Barton on that day?—No. Were you not near the school-house?—I was. Was he not near you?—I did not see him. Were you not on the ditch?—I was on a height. I know the road Mr. Watson was riding on. I saw three men coming down the boreen. I did not see them come out on the high road. I lost sight of them in the hollow. They then came across the fields. They did not come down the boreen. How do you know they came across the fields?—They could come no other way. If they came down the boreen I could see them. I handled a pistol that morning. It was an empty pistol. Did you ever fire a shot?—I did. When I had nothing else to fire at, I fired at a cap. Did you ever fire at any thing having life in it?—I did, at a bird and at a dog. Did you ever fire at a cap with a head in it?—I did not. Were you ever charged for the shooting a goat?—A goat was stole out of my uncle's field, and they said I killed her. I did not kill her. Were you ever charged with taking your uncle's wheat?—I was, but I was wrongfully charged. My uncle never turned me away. I am now living with my aunt. There is a quarrel about the land. My uncle is

trying to put my aunt out of the land. I do not expect to get the land when my aunt dies. I swore against my uncle. I did not follow the men through the wheaten field. I only went up through Patrick Walsh's green field. My uncle beat me before I swore my information. It was a long time before. We had a cow which my grandfather had willed to me. He took the cow off the land and hid her. I got intelligence of it, and fired off to where the cow was. My uncle came up at the time and dragged me into Tom Walsh's house and gave me a couple of clouts. Are you very friendly towards your uncle?—I do not care about him. He did not care about me.

A Juror.—Could you, when you first saw the men, distinguish what they had in their hands?—I could not, they were too far off. They were two fields and part of a third from me; they were only one field from me the time I saw Hayes with the gun. I am sure Hayes had either a gun or a blunderbuss. I am not sure which.

To the CHIEF JUSTICE.—When I first saw the three together I did not know them. I could not say which of them was in the middle. Did you see any thing with any of them?—No.

SIXTH WITNESS.

John Brown sworn.—Examined by the *Solicitor-General*.

I am agent to Mr. Arthur. I am a magistrate of this county. I know the boy Barton, who was examined here as witness. It was by me his informations were taken. Do you recollect any persons being brought before him for the purpose of indentification?—I do. It was in the yard of the police barrack in Limerick. He was then under the protection of the police. He was in one of the rooms of the police barrack. Seven or eight persons were brought before him, to see if he could identify the person who he said he saw on the day of the murder. This occurred immediately after the last Summer Assizes.

Mr. *O'Hea*.—My Lords, I would wish to ask a question of this witness, which may make this evidence inadmissible, as I know something of the locality of that building.

The CHIEF JUSTICE.—Certainly.

Mr. *O'Hea*, to the witness.—Is there a room in the police barrack

from which a number of persons can be seen in the yard?—There is. In this case was not the boy in the room, and the prisoner with others ranged in the yard?—Yes. The boy could see the prisoner, but the prisoner could not see him?—Yes.

Mr. *O'Hea*.—My Lords, I submit this evidence is inadmissible. What the boy said on that occasion, in the absence of the prisoner, and out of his hearing, is no evidence against the prisoner.

The CHIEF JUSTICE.—After what the boy stated, this appears to me to be evidence. On his examination, he deposed that on a particular occasion he saw the person whom he had recognised the day of the murder; and we only want to identify the person he saw in Limerick with the prisoner at the bar.

The *Solicitor-General*, to the witness.—Is the prisoner Hayes the man whom he identified on that occasion?—He is the man.

CHIEF JUSTICE.—Was he the person the boy identified?—He was. Did you know Hayes before?—I did not. I asked the prisoner his name, and he told me his name was Hayes. He stated that in the boy's hearing.

CHIEF JUSTICE.—Mr. *Solicitor*, you have now gone the full extent to which I think it legal for you to go, and the entire amount of it is this: the witness swears that Hayes is the person Barton identified; and that, in Barton's hearing, the prisoner stated his name was Hayes.

The *Solicitor-General*, to the witness.—Were the informations read to the boy?—They were. Did he afterwards identify the prisoner?—He did.

Cross-examined by Mr. *O'Hea*.

When Barton identified the prisoner, was he brought into the room where the boy was?—He was. Was he, in fact, one of the persons in custody in the presence of the boy?—He was. You brought another boy into Court to-day?—I did. Who?—One of the Crowes, for the purpose of identifying another person.

A *Juror*.—When the prisoner was brought before Barton, had he

a hat or cap on him?—As well as I recollect, he had a straw hat. Did the boy describe his dress?

CHIEF BARON.—Do not answer that question.

To Mr. *Bennett*.—The place where the murder was committed was in the county of Clare.

SEVENTH WITNESS.

Joseph Parker sworn.—Examined by Mr. *Bennett*.

I am a physician. I attended William Ryan (Puck), in fever, for one month, ending the 20th of December. I examined his body. I found an abrasion on his shoulder. It was healed up. It appeared to have been done by something blunt. A ball would do it.

To Mr. *O'Hea*.—It was in December last I attended him. A stone would inflict such a wound.

EIGHTH WITNESS.

Doctor *George Purdon* sworn.—Examined by Mr. *Plunket*.

I saw Mr. Watson after he was wounded. I was in attendance on him until his death. I think I saw him about an hour or an hour and a half after he had been wounded. He had several wounds. One on the right side of the head; one large wound across the back of the head, near which was a smaller one, which had fractured the skull. These wounds appeared to have been inflicted by an angular instrument. I think some were inflicted by the cock and some by the butt of a gun. These injuries caused his death. He lived from Monday until the Friday following. He was unconscious the whole of the time.

John Leslie Worrall was re-called, and examined by the *Attorney-General*.

James Crowe stood about one hundred and ten yards from the place of the murder, and Barton was about the same distance from Crowe. Crowe was nearer to the place of the murder than Barton. There are considerable hills and hollows on the road on which Mr. Watson was murdered. The murder was committed in the hollow. Between the place where the murder was committed, a hill has been lately cut down. There is a high bank on either side. I did not see the road at the time of the murder. You could not at present see from the

school-house the place of the murder. From the place where Hayes was pointed out to be standing, he could not see the place where the murder was committed. There was a hill between him and that place. The distance from that place to where Hayes stood is one hundred and eighty yards. Crowe pointed out to me the place where the three men were first seen by him; and persons going in the direction he describes would be lost sight of by him. The distance from where Crowe saw the three men to where he stood is from four hundred and eighty to five hundred yards. It is two hundred yards from where Crowe lost sight of the men to where Barton stood. From the place where Crowe was standing, you could see most clearly the place where the murder was committed.

EIGHTH WITNESS.

Constable *Michael O'Neill* sworn.—Examined by Mr. *Plunket*.

I arrested the prisoner James Hayes, at Tarbert, in the county of Kerry, on the 16th of July last. He was in a steamer, about going on board a ship about to proceed to America. He was ordered by the steward to proceed to the ship when I arrested him. The ship was lying off Tarbert from the evening before.

To Mr. *O'Hea*.—His whole family were going to America, and many others beside.

The case for the prosecution closed here.

Mr. *O'Hea* then addressed the jury on behalf of the prisoners.

Gentlemen of the Jury, my experience of the gentlemen who comprise the panel of your county, leads me to know that even in the most trifling cases brought before them, the greatest possible attention is given to all that can be advanced upon the part of the accused. But, gentlemen, when the charge is not of that trifling nature—when it is brought forward at a Special Commission, amid times of danger, and when your county has been unfortunately the scene of many outrages—when it is conducted by the *Attorney-General*, and the other law officers of the Crown—when it is under the guidance of the most eminent Judges of the land—when it is a charge affecting the lives of two of our fellow creatures, I have no doubt that every topic of defence that can be urged for the prisoners will receive at your hands all the attention and candid consideration it may deserve.

Gentlemen of the Jury, this case depends partly on circumstantial evidence, but principally upon direct testimony, affecting both the prisoners. The evidence of three of the witnesses you will have to investigate with all the care in your power. Both the prisoners at the bar are charged as principals; Patrick Ryan being charged as an acting party in the deed, and the other prisoner, James Hayes, as aiding and abetting, by being in a situation so convenient as to encourage the actual perpetrators, and to give immediate co-operation in the murder, if necessary. You, therefore, will have to consider whether there is evidence upon which you can convict the prisoners, or either of them.

Let us see what that evidence is. The first witness who deposes to the presence of either of the prisoners was that young boy, Nathaniel Barton, and, undoubtedly, I felt deep apprehensions when I saw him on the table, and observed his innocent and artless manner. Witnesses such as he are ever dreaded by the advocate of prisoners. But am I not justified in saying that these apprehensions were dispelled before he left the chair? Have I not reason to say that these apprehensions were needless? He was on the spot where the murder was committed, and prepared to tell the truth. What then does he prove? He says nothing whatever of Patrick Ryan; and how does he fail with regard to the other? His honest testimony is of the utmost importance, when you come to deal with the evidence given by another witness. Is it at all reasonable to suppose that he ventured to go very close to the persons whom he had seen? He saw them only whilst they were passing him by, and that was all he saw of them. As to what occurred in Limerick, you cannot rely on that. There seems to have been in the boy's mind some faint recollection of one of the men whom he saw on the day of the murder; and thinking that he saw some resemblance between the man whom he saw on that day and the prisoner James Hayes, he selected him from amongst the body of prisoners who were placed before him for inspection. Did he not know that he was called upon to select one of these persons as Hayes? and is it unreasonable to suppose that a child of his age would select a person that bore any resemblance to that image which he had floating faintly in his mind?—a person whom he had seen but once, and then for a very short period. Surely it must have been a faint image in his mind, for what is his conduct on the table to-day? He gazed again and again at this man; he had full opportunity, and looked at him for a great length of time. He is asked over and over again does he know the prisoner, and this honest, pure-minded boy

says he cannot identify him. Can you safely rely on such evidence? Can you safely say that this witness, when in Limerick, was not under a mistake? When you consider this child's youth, and the terror in which he must have been, when he was told that the Terrys were coming, can you rely on his testimony? The prisoner was in the room with him in Limerick while his informations were being taken; he had a long and full opportunity of seeing him. Can you then say, that after what has occurred here this day you can place reliance upon the recollection of that boy? I feel confident that you will give to these observations your fullest consideration. But whatever be the weight of his testimony, it does not affect the other prisoner, Patrick Ryan, inasmuch as the boy told you that he had not seen him.

Gentlemen of the Jury, the next witness was James Lacy. With regard to witnesses, I do not like to use angry or insulting epithets; they prove nothing, they are not suited to a Court of Justice. You all saw the manner in which that man gave his testimony. You will recollect also the time at which he divulged what he alleges he had seen, and that he told you that he had his own reasons for not disclosing it sooner. You saw his manner and demeanour, and you heard his story, and I boldly ask you is this man to get credit in a Court of Justice? If you believe him now you must discredit him on a former occasion, for he then swore to a story directly contrary to that which he swore here to-day; and further, he has sworn to a story which contradicts the testimony of James Crowe. He states in his information made before the magistrate, that it was James Hayes and Patrick Ryan whom he met on the road; he finds that not sufficient to support the case made here to-day, and therefore he now tells you that it was William Ryan and Patrick Ryan whom he met on the road, and that the magistrates put down a false statement for him in his information. Can you rely on such testimony as that? I would ask you is that such true and faithworthy testimony upon which you would feel yourselves justified in taking away the life of a fellow-creature?

Who is the next witness? The boy James Crowe. Of him I would say what I have said of his predecessor, he is a witness not to be relied on. Though young, he is depraved, and has exhibited the evil propensities of a vicious education. One of the miseries entailed upon us by the crime that disgraces the country is the injury done to the cause of truth and justice. By its effect testimony becomes polluted in a Court of Justice. You see the difficulties it throws in the way of the accused. It calls into action all the evil passions of the human mind, and stimulates them into unnatural activity. You saw the

passions that boy displayed. What was his story? He plants himself, not where he really was, at one hundred and ten yards distance from the place, but about thirty or forty yards. Why does he seek to place himself so near? had he no motive for that purpose? I will not say against the prisoners at the bar; but crime is so interwoven in this case, that you can easily conceive a motive for his coming forward. What took James Crowe to that murder at all? Was he there at all? I say no. Barton, that honest witness, tells you he did not see him. I asked him did he stand on the ditch? he said not, but on a rising ground, upon a part of the road. He must, therefore, have stood in the direct line in which Barton looked when he heard the shot fired. Recollect also what the character of that boy is. He was charged by his uncle with stealing his corn; and observe the time at which he first comes forward to detail that which he has now told you. It was not until after the announcement of this Special Commission. His informations were not made until the 21st of December 1847. Has he the excuse for saying that he was afraid? He does not pretend to say so. Have you any reason to suppose that he was so? It may be said, what motives could he have had in coming forward? I cannot enter into the motives of a witness. It is not for me to scrutinise his mind: that appertains alone to the Searcher of all hearts. But whatever be his motive, be it hatred of his uncle, or love of gain and reward, or his own innate vileness of character, he had the charge ready made for him, the details of the murder were known to all the country, and he had only to place himself in a certain position and detail what he has told to you this day. He found Mr. Watson murdered; he knew that he was murdered with the butt-end of a gun; he was aware that two men were aiding at that murder, and he had nothing to do but place himself on the high part of the road of which he has spoken. He tells you nothing of any plan or confederacy, he merely fixes a certain party with the crime. He knew we had no means of testing his truth, no means of testing his accuracy or his knowledge by cross-examination. He had merely to allege that he was there and that he had seen those persons.

You will have to consider how this evidence affects each of the prisoners. You will consider what opportunity the boy Crowe had of seeing the prisoner Hayes; first he tells you that he was a quarter of a mile off, and that he followed them: on the second occasion on which he saw Hayes, he was one hundred and eighty yards distance from the place of the murder. You will have to consider, if you believe Crowe's evidence, whether Hayes was near enough to give

adequate assistance. You can merely speculate on his participation in the murder, unless you believe the evidence of Lacy, who places him in a different position. How can you rely on such testimony as that? Some evidence was given, tending to show that the prisoner Hayes was absconding from justice. But I shall be able to explain that, inasmuch as he and all his family were emigrating from the country, along with many others, at that time.

Gentlemen of the Jury, taking all these matters into your consideration, and weighing them fairly and deliberately, and keeping in view that great principle, that it were better that one hundred guilty men should escape, than one innocent man should suffer, you will say whether you are satisfied in your consciences that the prisoners at the bar are guilty. Never let the arm of the law fall upon any whose guilt is questionable. If you do, justice is hurt, and the law is in danger. Gentlemen, I most respectfully, and with the fullest hope and confidence, leave this case in your hands.

William Spaight sworn.—Examined by Mr. *O'Hea*.

I am a magistrate of the county of Tipperary. I know the prisoner James Hayes. He was a tenant to my father. He bore a very good character up to the time of this charge. I always heard that he was an industrious and quiet man.

To the *Attorney-General*.—I have known him since my father got the property, three years since. He lived within a mile of me, in the county of Tipperary.

Case for the prisoners then closed.

The *Solicitor-General* in reply.

Gentlemen of the Jury, I think it right to make a few observations in reply to my learned friend Mr. *O'Hea*. This transaction has been established beyond all doubt; that a barbarous murder was perpetrated in the noon day, is beyond all doubt, when this unfortunate gentleman, Mr. Watson, was proceeding from home in the discharge of his duties: and it will be only for you to say, whether the prisoners at the bar, or either of them, took part in the commission of it? The more barbarous the murder, the more carefully and cautiously you should act, and you should not allow your minds to be led away from the case you have to consider, by any feeling for the sufferings of this unfortunate gentleman. Four or five witnesses have been examined,

and Mr. *O'Hea* calls upon you to say that you cannot be satisfied that a case has been made to warrant you in finding a verdict of guilty.

Gentlemen, it is my duty to call your attention to the evidence which has been given, and to show you that nothing appears to impeach the character of the witnesses, or to invalidate their testimony. The first witness, Denis Flynn, merely proves the fact of the attack being made on Mr. Watson, and finding him in a dying state; he could not identify any of the party. As to Barton's evidence, it simply amounts to this: that on the 20th of July last, he identified one of the prisoners at the bar, and after a lapse of eight months he cannot now say he is the man. It is for you to consider if you can reconcile this, and act upon his testimony. His truth is not denied, nor is it suggested he had any personal enmity to Hayes. If, therefore, you believe his testimony, a clear case has been made against the prisoner Hayes.

You will next consider the position in which Lacy stood: he lived on the spot. It appears from the evidence of Flynn, that he must have come from the place where Lacy described he had been. He was cross-examined, with a view to show that he had been arrested for this charge. He denied any participation in the crime; and could any thing be more natural than, finding him on the spot where the crime had been committed, for the police to have him taken up for the purpose of inquiring into his knowledge of the circumstances? But then it is said, he did not give evidence until August. It will be for you to say, did he perjure himself? Is there any thing that could induce you to say that he has sworn to what he knew nothing about—that he is now fabricating evidence against the prisoners at the bar? In his information he certainly stated that the prisoners at the bar were the men he saw on the road; to-day he says that Hayes was not one of those persons, but that he joined those two persons in a field immediately after they had committed the murder. In that respect he was equally guilty as the party who struck the fatal blow; and it will be for you to say whether he has not satisfactorily accounted for this discrepancy?

With respect to the witness Crowe, he states that he knew the prisoners well for twelve months before; what assignable motive could he have for perjury? He had no connection with the prisoners, he had no malice against them. As to the distance he states he was from the scene of the murder being less than the actual distance proved by the surveyor, no great reliance can be placed on a discrepancy of that description. If the main facts deposed to be true, you should

not discredit his testimony on a discrepancy such as that. Flynn tells you he heard a shot, and Crowe tells you that shot was fired by Mr. Watson, and the surgeon proves William Ryan had marks of a gun-shot wound on his body.

These are the facts of the case, and it will be for you, gentlemen, to say whether you can disregard the testimony of those witnesses? It will be for you to say, upon the whole, whether you are satisfied that both or either of the men at the bar assisted at the murder of Mr. Watson? As to the prisoner Hayes, it will appear in point of law that he went out with the party; that he was armed, and ready to give his assistance if necessary; that he was at a convenient distance, and although he was not one of the perpetrators of the murder, he is as much guilty of the crime as if he had taken away the life of Mr. Watson.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, the prisoners at the bar are charged with the murder of James Watson, on the 17th of May 1847. The mortal wound is stated to have been given by William Ryan, and the prisoners at the bar are charged with being present aiding and abetting. In point of fact there is no difference in the case of the two prisoners James Hayes and Patrick Ryan, as regards their actual participation in, and being present at the time the murder was committed. If you believe the evidence, there can be no doubt whatever that the prisoner Patrick Ryan was one of the men actually engaged along with William Ryan (Puck), in bringing this unfortunate man to this untimely end. But it has been suggested that the prisoner James Hayes was not so far present as to be within the meaning of this indictment—a participator in the offence. But if you believe the evidence, although he was not on the spot, yet if he was one of an armed party, assembled for the purpose of perpetrating this crime; if he went there for that purpose, and placed himself in a contiguous position, where he could keep guard, and if necessary assist the perpetrators: if you believe the evidence, he was in the eye of the law guilty; and you will be justified in finding him guilty as a principal in the commission of the murder. Our law says he must be present aiding and abetting. But that may be a constructive presence—as when one man commits a murder, and another keeps watch at some convenient distance. I do not mean to decide whether, although Hayes was not actually, yet that he was constructively, present when this murder was committed: that is solely for your consideration.

Gentlemen, the questions you will have to consider resolve themselves into two. First, you will say whether the evidence which you have heard is evidence which you believe; if so the prisoners are guilty; this however is for your consideration. If you believe that the witnesses have accurately detailed the facts without any substantial difference, so as to satisfy you that their testimony can be made the foundation of a satisfactory verdict, the next question for you to consider is, are they faithworthy witnesses, or have they given perjured evidence?

These being the two considerations, I will give you a short outline of the facts, relative to time and place. With respect to the actual perpetration of the murder, no doubt whatever can exist. Mr. Watson was dragged from his horse; he fired a shot in his own defence; and if you believe the evidence, he was then assailed by the prisoner, Patrick Ryan, and William Ryan (Puck). I shall take the witnesses in order of time, not in the order in which they have been examined on the trial. In that order, the witness who first saw the three assassins was James Crowe: he first saw them at a distance of a quarter of a mile from him, he then lost sight of them in a hollow; he could not say whether at that time they had arms or not.

The next witness in point of time is Nathaniel Barton. Now there is no manner of doubt that he is credible to this extent, that he saw two persons, one of them having a gun, carrying it in such a way as if attempting to conceal it, putting the butt up to his shoulder, the barrel down by his thigh. These circumstances occurred before the murder was committed. Then what have you with respect to the actual perpetration of the murder? Crowe tells you, that having moved from the position in which he originally stood, he moved considerably nearer to the scene of the murder, and he says that he had a full opportunity of seeing its perpetration. He tells you that it was committed by Patrick Ryan the prisoner, and William Ryan (Puck). He also identifies Hayes as the person who joined them, after committing the murder, and shortly afterwards separated from them.

The next witness, in point of time, is James Lacy. He says, not that he saw the murder committed, but that he saw two persons, one of whom is the prisoner Patrick Ryan, coming from the direction of the scene of the murder, and that he was joined by Hayes. That is the evidence with respect to time and locality. The opportunity of the witnesses to see what they did see was attempted to be impeached. It is said that Barton was in a position that he must have seen Crowe. But he tells you he did not see him. With

respect to that, you have the evidence of the surveyor. From what he says, Barton, from the position in which he was placed, could not have seen Crowe. Therefore, so far the case for the Crown is established.

Then comes the question, do you believe the evidence? This is not a case in which the evidence is of a circumstantial nature; and there does appear to be a strong coincidence and consistency between the evidence of the witnesses, if they be not perjured. With respect to that, I give no opinion, because their credit is exclusively for you. It is said that Barton's testimony is impeached, or rather detracted from. Now, it is not denied that he is an honest witness; but it is said he may have been mistaken. I should observe that none of his evidence affects the prisoner Patrick Ryan, except that he deposed to having seen two persons together. You will observe that, when examined to-day, he could not identify the prisoner Hayes; but he tells you the man who was produced to him some months since, he recognised as the man whom he saw concealing the gun, and that he was one of the men whom he described as having seen coming out from the place of the murder. If you believe his testimony, it leaves no doubt but that the prisoner Hayes is the man whom he identified; but it would be most unsafe to act upon the evidence of that boy because he had identified him some months since. I could not allow you to act on that evidence, if it stood alone. If, then, by itself, it would not warrant you in convicting Hayes, you will then have to consider has that evidence been corroborated. Has he been identified by any other person, as having taken part in the transaction? He was identified by Lacy and Crowe. They had previously known him. He was an utter stranger to Barton, before the day he had seen him. He was not so as to Lacy and Crowe. Lacy, unless he be perjured, puts him in a position contiguous to the scene of the murder, plainly in concert with the prisoners, and moving off with them. But there is a drawback to Lacy's evidence; for he told you that the two men who came towards him were William Ryan (Puck) and the prisoner Patrick Ryan; and he tells you that there is an error in his information, for that he always stated these were the persons whom he met. Here again I have to observe, that if you were now called upon to act upon the evidence of Lacy, and upon that alone to decide upon the guilt or innocence of the prisoners, that evidence being contradictory, and in so essential a part, I am bound to say that you should not act upon it alone. Whether this be a mistake or not I cannot say. But you will not forget that, at all events *quâcumque*

viâ, Hayes has been made by him one of the persons. His evidence, however, is subject to that detraction; and unless sustained by testimony that leaves no rational doubt on your minds, you ought not to act upon it. It is plain that he is supported by the testimony of Crowe. If you believe what was sworn by Lacy is true, it is impossible that Crowe could be mistaken; for, although at a considerable distance, he undertakes to say that Hayes was the third person, and that he joined the other two, and went for a short distance together with them. What grounds have you to discredit his testimony? Is there any thing to show a hostile intention to calumniate Hayes? Are you to disbelieve the whole of the evidence, because of the infirmity in Lacy's evidence? The prisoner Ryan was not identified by Barton.

This is the evidence of the witnesses. If this evidence be true, the prisoners are each of them guilty; because, if you believe the evidence, Hayes was from the beginning one of the party. Under all the circumstances, their credit, as I have before told you, is entirely for your consideration. If you think them unworthy of credit, or if you think them inaccurate in all, or the material, facts of the case, you are bound to give the prisoners the benefit of it. But if you believe the evidence, and the result be as I have stated in the abstract, you are bound to convict the prisoners.

At five o'clock the jury retired.

Mr. *O'Hea* requested that the information of Lacy should be sent in to the jury.

The jury were then re-called, and the CHIEF JUSTICE told them that he had them re-called for the purpose of sending to them the informations of James Lacy; but leaving matters as they were before, with permission to the jury to refer to them if they pleased.

The jury then retired, and in ten minutes returned into Court, with a verdict of Guilty against both prisoners, who were then remanded.

At half-past five o'clock the Court adjourned, until nine o'clock on the following morning.

Friday, January 14.

Third Day.

TRIAL OF PATRICK CUSACK,

FOR APPEARING IN ARMS.

The CHIEF JUSTICE took his seat at half-past ten o'clock.

The long panel having been called over, the following jury were sworn :—

Francis Drew.	Hugh Singleton.
Ralph Westropp.	James Mahon.
Thomas Crowe.	Matthew Canny.
James B. Butler.	John Crowe.
Edward W. Burton.	F. M'Namara Calcut.
D. J. Wilson.	William Arthur.

Patrick Cusack was then given in charge upon an indictment for appearing in arms, to the terror of her Majesty's subjects, at Cranaher, in the county of Clare, on the 16th of October 1847. There was a second indictment for maiming a horse.

Mr. *O'Hea*, on the part of the prisoner, offered to withdraw his plea of not guilty, and to enter a plea of guilty.

CHIEF JUSTICE.—The prisoner has been given in charge ; you must go on with the case.

FIRST WITNESS.

William Minogue was then sworn.—Examined by the *Attorney-General*.

On the 16th of October last I was coming to Ennis from the parish of Kilmore. When more than one mile from Ennis I met two loads of corn on the road, going in the same direction I was going. I saw the prisoner coming towards the place where the cars were. The cars were behind me. The prisoner was in a field of stubbles. I then heard a shot and saw the smoke of it. I heard a horse was shot, but did not

see it. The prisoner had a gun ; he ran away, and the police pursued him. I saw him with the police a few minutes after, but did not see him arrested. This was about ten or eleven o'clock in the morning. This occurred in the county of Clare.

To Mr. *O'Hea*.—I never saw the prisoner before.

SECOND WITNESS.

Constable *John Willis* sworn.—Examined by the *Solicitor-General*.

I know the prisoner. I arrested him in October last, at Cranaher in the county of Clare. I was escorting John Molony's corn from Crag to Ennis. When we came to the plantation of Cranaher I heard a noise inside the wall, and saw Cusack, the prisoner, inside the wall with a double-barrelled gun. I had another constable with me. I walked on slowly ; when I passed the corner of the plantation and cleared the wall, I looked behind me and saw the prisoner concealing himself behind the house at the end of the plantation. When the horses were passing, he stepped out and presented a double gun at Molony's horses, discharged both barrels and ran off. A couple of minutes elapsed between each shot. I could see him present at the horses. I saw no sign of the horses being hit. He ran away. I pursued him and arrested him.—[Witness identified the prisoner.]—I saw him throw away the gun.—[Witness produced the gun.]—I took a pistol from his hand when he was running off. When he came to the first wall I took it from him ; he then escaped from me. The pistol was loaded with a ball. That part of the country was disturbed at the time.

Cross-examined by Mr. *O'Hea*.

No injury was done to the horses ; he was very near them.

Constable *Thomas Egan* sworn.—Examined by Mr. *Bennett*.

[Witness identified the prisoner.]—I was not present when the prisoner was arrested. I saw him about five minutes after the last witness was with him. I searched him and found a powder flask and two bullets in his possession. That part of the country was disturbed at the time.

The jury found a verdict of Guilty on the first indictment ; and Not Guilty on the second.

The CHIEF JUSTICE.

Patrick Cusack, from every thing that has transpired in the course of this trial, I do not hesitate to say, if the charge had been brought against you for another offence, to which you are clearly liable, I would have unquestionably sentenced you to transportation ; as it is, the sentence of the Court is, that you be imprisoned for two years with hard labour.

Same day—eleven o'clock.

TRIAL OF JOHN LIDDY, AND THREE OTHERS, ,

FOR ASSAULTING THE DWELLING HOUSE OF WILLIAM WALSH.

Same Jury.

John Liddy, Patrick Canny, Michael Hickey and Michael Skeehan were given in charge on an indictment, that they on the 1st of August 1847, at Truagh in the county of Clare, did maliciously assault the dwelling house of William Walsh and carry away a gun, the property of William Walsh.

The *Attorney-General* briefly stated the facts.

Gentlemen of the Jury, the prisoners at the bar stand charged with a very grievous offence. The facts of the case are shortly these : An armed party came to the house of Mr. Walsh between the hours of eleven and twelve o'clock on Sunday the 1st of August. They knew he had arms, and were aware that he was not at home at the time, and thought that they would get those arms without resistance. Mrs. Walsh seeing them approach the house closed the doors ; they broke in, ransacked the house and took away the arms. She will identify three of the party. This is one of those outrages of such a description, and of such frequent occurrence, that it is absolutely necessary it should be brought forward on an occasion like the present ; and the evidence will leave no doubt on your minds as to the guilt of the prisoners.

FIRST WITNESS.

Margaret Walsh sworn.—Examined by Mr. *Bennett*.

I am the wife of William Walsh. I lived at Truagh, in the county of Clare, on the 1st August last. On that morning my husband left the house at half-past ten o'clock to go to church. Two servants, one man servant, and a female servant, named Mary Keogh, and a little girl, named Mary Drury, were in the house at that time. My husband always kept a gun and pistol in the house. About a quarter of an hour after he left the house, I had gone up to my bed-room, and from the window I saw some men getting over a ditch. I thought they were boys at first, but when I looked a second time, I saw they

were men and had guns. They caught a glimpse of me, stooped down, and lowered their arms and ran on very fast. I was then in a room, a bed-room, on the parlour floor. I was very much frightened. I could not say how many men there were at this time. I was too much shocked. I think there were four or five. I went to the head of the stairs. My bed-room is at the head of the stairs. I called the servant, Mary, and told her that armed men were coming in, and to try and get help. I saw the little girl sitting with the child at the bottom of the stairs. I looked over the chimney-piece, where Mr. Walsh generally kept his gun. I saw no gun there. The girl gave the child to me, and I said to her, let us shut up the windows; she shut up one window and I shut the other. I then heard great smashing of a window; the noise came from the kitchen. I went out into the hall, and immediately heard the tramp of steps on the stairs. When I got into the hall I saw men coming up the stairs. I could not at that moment tell how many there were. I turned then into my own room with the child in my arms. They followed me. I then saw three men. They immediately said, "Give us the fire-arms or we will have your life." I was so much shocked at that time, I did not answer. One of them then stood upon a chest, and the other opened a window; he said, "We will have your life; make haste, give us the fire-arms." Did you know those men?—I would know them now. I saw them afterwards.—[Witness identified Liddy and Hickey.] Hickey stood upon a chest while Liddy unlocked the wardrobe. This occurred in my bed-room. When Hickey stood on the chest, he searched the top of the wardrobe. Liddy unlocked the wardrobe, and thrust his hand into it. The key was in it, but he did not open the second door. I then looked back, and saw a third man, who is not here. He was a young man. They got nothing. They again demanded fire-arms, and I then said "I will look for them, but I solemnly declare I do not know where they are." Hickey then went into the bed-room opposite mine. I could see into that room from where I was standing. He got up on the foot of the bedstead, and searched the top of the wardrobe. He got nothing there. Liddy went into the parlour. I saw arms with both Liddy and Hickey. I am not sure if the other had. I could see into the parlour. Liddy began to smash the table in the parlour with his gun. The other man then ran from the bed-room, which is opposite to my own bed-room, with a double-barrelled gun in his hand. He came down the kitchen stairs, holding the gun on the wall side of the stairs. Hickey then came down off the bed and said, "Give us the pistol." I was then

standing outside the bed-room door in the back hall. I said "There is a room below, come down with me, and I will look for it." There were two bed-rooms on the kitchen floor. Hickey and I went down together. We went into the room on the right hand, nearly opposite the stairs. I had shut up the windows in that room a few minutes before. I opened one of them. Hickey jumped on the table. I never saw him before. He searched on the top of the bed, and Liddy came to the door, and kept his gun pointed at me and the child. Liddy was standing at the door, rather behind it. I was standing in the middle of the room. Liddy had a small leaf to his hat. I thought he was going to shoot me, and I looked very earnestly at him, and I said "Do not, for I do not deserve this from any of you." At that moment Hickey jumped down, and brought a small box with him, and turned out the contents on the floor. He did not break the box, it was open. He took out of it a pistol, shot-belt, powder-horn, and a little charger. I heard a noise overhead in the drawing-room of smashing at a terrible rate. I looked up to Liddy and said, "I will give you any thing in my power if you stop the breaking of the furniture." At that moment both rushed out of the room. Hickey took the pistol with him, the shot-belt, and powder-horn. I followed them; they went out through the kitchen. Immediately on going out, I saw another man coming out of a bed-room on the kitchen floor. That man had a gun. I had not seen that man before. He followed the others through the kitchen. I saw him plainly.—[Witness identified the prisoner Skeeahan.]—I could not mistake him. They went out through the kitchen. I went into that room and saw the servant looking out of the window. He looked greatly frightened. The servant's name is Pat Connell. At that moment I heard some one say, "Drury is coming." Drury was our steward. They had all then gone off. Mary Keogh said that, I believe. I said there is help at last. I run up to the hall-door, and saw Drury coming up with two others. I never saw any of those three prisoners before that day. They got in through the kitchen window; they left but one pane of glass in it; the frame and all was broken. This happened on the 1st of August. They took away a double-barrelled gun, a pistol, shot-belt, and powder-horn. I was brought to see Liddy the same day, when he was taken prisoner, about three o'clock. I saw him at Ardnaglassy police barrack. I did not see the other men for more than three months after. The first I saw after was Hickey. I saw him in Limerick. I knew him at once. It is not long since I saw Skeeahan. I saw him here in gaol. I saw him since Christmas. I knew him at once when I saw him. We have been

living at Truagh these ten years. It is near four miles from Limerick. I sent for help immediately. The child was a year and a-half old.

Cross-examined by Mr. *O'Hea*.

Were you much frightened?—I was at first greatly shocked, but I soon recovered. I was more alarmed for my little child than for myself. Your only opportunity of seeing the third man was when he was coming out of the room?—That was the only time. Were any of them disguised?—No.

To Mr. *Bennett*.—At first I was greatly alarmed. I recovered my presence of mind very soon, for I saw all depended on me.

SECOND WITNESS.

Patrick Connell sworn.—Examined by the *Solicitor-General*.

I remember the party coming to attack Mr. Walsh's house. I saw them breaking into the house. I was coming out of my room, and one of the men presented a gun close up to my head, and told me to "stand as I was, or if I moved a step he would shoot me." He asked me "did I know him?" I said "I did not." "Do not look at me," said he; "no," said I, "I will not." I saw him go into the room. He got inside me into the room, and went to a chest of drawers, turned the butt of the gun to it, and began to jump. He jumped out of his carcass. He got up on the chest of drawers and was jumping on it. He said nothing. When on the chest he began to curse. I do not recollect exactly any thing he said. He did not remain long in the room. I could not say how long he was there. I was outside. I looked into the room and had an opportunity of seeing what he was doing. This room was below stairs. I remained there until he left the room. He passed by in the direction of the kitchen. I remained in the room until my mistress came in to me. I know that man.—[Witness identified the prisoner Skeehan as the man.]—I did not see him take any thing out of the room. He had a gun; no other arms.

Cross-examined by Mr. *O'Hea*.

Were you frightened?—I got a change on me. Would you know a cow from a horse at that moment?—It is my opinion that I would, great as my fright was. Did you ever see that man before?—I never did. When he bid you not look, did you obey him?—I did. Did you look up afterwards?—I did. When he was gone?—Before he went I

saw him both in the room and coming out of it. His face was not blackened. Did you see his side or his front face?—I saw both side and front face.

THIRD WITNESS.

Mary Drury sworn.—Examined by Mr. *Plunket*.

I am daughter to John Drury, the steward of Mr. Walsh. I was in his house when it was attacked. I was in the kitchen. I was there when the window was broken. I saw two men at that time. They got in through the window. I then went up to my mistress and stood in the parlour. Did you see any of them so as to know them?—A man came behind me and caught me by the hair. I would not know any of them, I was too much frightened.

This witness was not cross-examined.

FOURTH WITNESS.

John Drury sworn.—Examined by Mr. *Bennett*.

I am steward to Mr. Walsh. I remember the Sunday his house was attacked. I saw Mr. Walsh that day going to church. I went after him. I was going to mass. Mr. Walsh parted me at the house. I saw him going off towards the church. The chapel is about half a mile from the avenue, or three quarters. I did not come up to the chapel. I saw some people on their knees outside, and I stopped. When I stopped, I saw five men at a distance off on the road. They went into a wheat field. Four of them went on, and one stood on a ditch. That field belonged to a man named Cusack. They then went towards our place. I went across them and met them on Mr. Walsh's land. They had then come out of the wheat field. I came before them in the field, and went up to them, and spoke to the first man who came up. Would you know that man?—I would, I think.—[Witness identified the prisoner Canny.]—I never knew him before. I am sure I spoke to that man. I said, "Now, boys, it is a shame for you to be going through the tillage." He made me no reply. Another man came up in less than a few minutes, threw his coat across his face, and presented a gun at me. I did not know that man at that time. I then said, "Now, boys, if I knew what you were I would not interfere, but would let you go on about your business." I then turned my back to them, went over a stone wall, and went over to Mr. Walsh's herd's house. As I was going to the herd's house I looked behind me, and saw the five men facing towards Mr. Walsh's house. Where I met them was about a quarter of a mile from his house. I went to

the herd's house and found a little boy there and another man, and we went towards Mr. Walsh's house. As we went I heard a noise coming from the great house, like the breaking of timber. When I was coming towards the house I saw one of the men standing outside. I was then about fifty or sixty perches from the house. When we were coming towards the house, he run down the gang way into the kitchen. He was not long in when he run out again. We were going in the grand gate into the lawn at this time, about fifty or sixty yards from the house. He came out, and when we were closing the gate he run in again. When we were pushing towards the great house, himself and four others came out together. I then threw off my coat and shoes and followed them, and came up with them, and was talking to them. They told me to stop back or they would have my life. One of them presented a gun at me. I did not then know the man who presented the gun at me; but I knew him after when I caught him.—[Witness identified the prisoner Liddy.]—He is the man. I told him to fire if he liked, but I would follow him. Another man who was with him had a gun in his hand, and a powder-horn in the other. He threw the powder-horn from him and took off his hat. He had a bald head, but I did not know him. As I followed them, the boys and girls were coming from mass, and a party collected with me.

CHIEF JUSTICE.—Did the persons, when they collected, join you in pursuing them?—They did.

To Mr. *Bennett*.—I pursued them until I had one of them housed. He went into John Halloran's house. I did not see him go into the house, for the door was on the other side of it. I saw a woman coming out of the house, and she locked the door, and went into the barn. I asked her was there any stranger in the house? She said "No." I asked her for the key; she said her daughter took it away. O'Brien said, "He is in the house, let us break the door." "No," said I, "let us wait until the police come up." This was about one mile from the great house. The police then came up, went into the house and brought from under the bed himself and his gun. Had you ever known any of those men before?—I had seen Hickey before; but I did not know him that day, his back was to me. I think I saw Skeehan seven years before. I saw Liddy before, but did not know him when he cocked the gun, nor until I caught him.

I did not know the other man. They live two miles from my master's house.

This witness was not cross-examined.

FIFTH WITNESS.

Timothy O'Brien sworn.—Examined by the *Solicitor-General*.

I am a tenant of Mr. Walsh. I remember the time his house was attacked. I went to the house. I saw Mrs. Walsh standing in the door, and I went into the house. I found the parlour all tossed, and the furniture broken. I went in pursuit of the party. I saw Drury. I did not see him until I came to Halloran's. When I came up to Drury, he told me one of the men was in the house, and that it was locked. "Come," said I, "we will break open the door." "No," said Drury, "the police are coming, wait." When the police came, we found one of the party.—[Witness identified the prisoner Liddy, as that person.]—I never knew him before. He was taken from under the bed. He had a gun with him.

This witness was not cross-examined.

SIXTH WITNESS.

Constable *Thomas Taylor* sworn.—Examined by Mr. *Plunket*.

I saw a man running towards O'Halloran's, and followed him. That man was O'Brien, the last witness. When I came to O'Halloran's they told me they suspected one of the party was there. Drury told me the door was locked. I demanded the key. The door was opened, and I went into the bed-room, and fixed my bayonet, and put it under the bed. A man cried out, "Do not stab me, I will come out," or "I am coming out." The steward attempted to leap on him. When he came out, he said, "You need think nothing about it; we done very little harm; we made no great attack." I asked Drury how many were of the party, and the prisoner Liddy replied, "only five of us." I asked the prisoner if he had arms, and he stooped under the bed and handed me a gun, and said, "this is all the arms I had." I examined under the bed, and found nothing more. The gun was loaded with duck-shot. I arrested Pat Canny that night, in the house of Patrick Cusack. I first searched his own house, and was told he was in Cusack's. I went there and found him in bed. I searched for Hickey the same night, and on several other occasions, unsuccessfully. I also searched for Skeeahan. When I searched for Skeeahan he had

been described very accurately by Mrs. Walsh. I did not search for him until the night of the 5th. That part of the country was disturbed. Several outrages had occurred in that neighbourhood about that time.

SEVENTH WITNESS.

Alexander Heard, sub-inspector, sworn.—Examined by the *Solicitor-General*.

Had you any of the prisoners arrested?—Skeehan was arrested near Roxboro', in the county of Limerick, on the 24th of November. I went to a house. He came out, and when he saw me he ran back. This was the house of a man named Molony. I forced in the door. He attempted to bolt it, and was not able to do so; but he held it against me. On the door being forced, he ran through the back door, through an orchard, and out into a field. I pursued him, and one of my men and I grappled with him, and we all fell together. Constable Henry was that man.

This witness was not cross-examined.

EIGHTH WITNESS.

Sub-constable *Thomas Kelly* sworn.—Examined by the *Attorney-General*.

I arrested the prisoner Hickey on the 13th of November. I arrested him concealed under a bed, between three and four o'clock in the morning. I arrested him in the house of Patrick Hickey, in Ballybrack, in the county of Clare. That house was about a quarter of a mile from his own house. I knocked at the door for some time. I said I was a policeman, and in about ten minutes was let in. I went into the bed-room, and found him under the feather bed.

Mr. *O'Hea*, for the prisoners, addressed a very few observations to the jury, and stated that, with regard to the prisoner Canny the evidence was very slight. He was identified by but one witness, Drury the steward, who had never seen him before, and he only says he thinks he was the person; and he was known to some of the others, yet they do not venture to identify him.

Drury was re-called and examined by the CHIEF JUSTICE.

Do you know Canny?—I do.—[Witness identified him.]—Who was the man who presented the gun at you?—Liddy. What did you

see Canny do?—I said to him it was a shame to be going through the tillage.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, there is left very little for me to say—in truth, I can do but little beyond calling your attention to the identification; and the only question for your consideration is, whether the prisoners have been identified satisfactorily, for with respect to the commission of the outrage, there can be no doubt, a party of five men having been seen going to the house.

As to Liddy, he is identified both by Mrs. Walsh and Drury, and he is caught by fresh pursuit concealed in a house, with a gun in his possession; and in addition to that, you have his own declaration, that there were five men in the party, and that they might think nothing about it, as they did but little harm, and made no great attack. If he be convicted, we will see whether that be so or not. Then, if Mrs. Walsh be not mistaken (for it cannot be said she told what was untrue), she also indentifies Hickey and Skeehan; and you have Canny identified by Drury. Canny came forward as spokesman to the party to prevent the interference of Drury. If this evidence satisfies you that the prisoners were present at the outrage, it will be your duty to find a verdict accordingly. If, on the other hand, you entertain any doubt, you will give the prisoners the benefit of it.

Gentlemen, if you require any further assistance, I shall be ready to afford it.

The jury at once returned a verdict of Guilty.

SENTENCE.

The CHIEF JUSTICE then addressed the prisoners as follows:—

Prisoners, you have been severally convicted upon evidence which has not left a shadow of doubt as to your guilt. You are now convicted felons; and the sentence I am about to pronounce upon you is one which, if felt by you and others as it ought to be felt, makes you objects of compassion. I will at once relieve you from all doubt as to your fate, by telling you that you are to be transported for fourteen years. As to admonition or advice, you are beyond its reach; your sentence will put you beyond mere advice, for you will be deprived of the power of doing any injury; it is therefore unnecessary to warn you as to a repetition of those practices which it will be put out of your power to follow. This case is similar to one which occurred in the

county of Limerick, when, in pronouncing sentence, I told the wretched convicts that it was not for their benefit I addressed them, but for the sake of others. I would now briefly point the attention of others to the position in which you stand. If the untried, unapprehended criminals of this country think yours an enviable situation, why let them persevere, because by their perseverance they will be sure to suffer the same fate ; but if loss of liberty, exile from their native land, loss of friends, kindred and relations, all the ties that bind us to each other, and to our species, if these be of any value, of any consideration in their eyes, let them recollect that all are lost to you, and will be also lost to them if they do not reform their evil practices and become obedient to the law, of which hitherto they have been audacious violators. I would ask them in the name of common sense, supposing any idea of religion or morality out of the question, in the name of common sense and the common instinct of self-preservation, how, with men of intelligence, can any man, having regard to his own preservation, who pursues your course, be considered a rational being? It is impossible. If they are not altogether lost to all feeling towards each other, your example ought to be a warning to them. I protest I know not to what to attribute this infatuation which leads to outrages such as this. An armed body of men in the day-light, when some of the inmates were attending divine service, commit this outrage, unparalleled in any civilized country.

I do not speak from want of feeling, but for the sake of those likely to be guilty of similar offences. Even for their own preservation, I call upon them to look to you and to take example by you, and let your case be a warning to those engaged in the habitual violation of the law. Let it show them who are so circumstanced, that there exists a spirit in the country, the effect of which will lead to the successful apprehension of offenders and the vindication of the outraged laws. What have they to expect? let your fate be an answer to the question. Impunity they cannot expect, punishment they cannot avoid. I have pronounced this heavy sentence upon you in order that your example may be a signal warning, and the means of preventing the continuance of those practices by which our country and our nature is disgraced.

Same day.

TRIAL OF OWEN LIDDY AND TIMOTHY O'BRIEN,

FOR FELONY.

The prisoners joined in their challenges, and having challenged eleven peremptorily, the following jury were sworn:—

Ralph Westropp.
James B. Butler.
James Mahon.
David J. Wilson.
John Blood.
Matthew Canny.

William Arthur.
Hewitt Bridgeman.
Henry Spaight.
Henry Bolton.
Ralph Callinan.
John B. Knox.

At half-past one o'clock, *Owen Liddy* and *Timothy O'Brien* were then given in charge on an indictment, that they, at Broadford, in the county of Clare, on the 2nd of October, did feloniously assault one John Hogan, and rob him of certain monies, his property.

FIRST WITNESS.

John Hogan sworn.—Examined by the *Attorney-General*.

I live in the county of Galway. I was in Limerick on the 2nd of October last. I went there to bring home meal. I left Limerick late on that day, and when I came to Broadford it was nine o'clock. Broadford is in the county of Clare. There were three cars. Edward Thornberry and his wife Elizabeth Thornberry (my sister) were on one car; Mrs. Bleach and Mrs. Salmon were on my car, and the other car belonged to John Lyons of Tomgraney. A man named Morony rode a mule with us. I was guiding the car. Four men overtook me, and one of them run up and took hold of the reins and told me to deliver. He caught me, and struck me, I think with a pistol. He struck me across the mouth and cut me in three places. Another man struck me on the leg with a stone and wounded me, and I was confined six weeks with that wound. They took £3 in single notes from me, one of them was a note of the National bank. I knew none of the party. It was a dark night. I saw the four together. I called for help, and my sister Mrs. Thornberry, who was on the last

car, came over to me and asked me was I killed; I said I was. She struck one of them with a whip. I did not know any of them.

This witness was not cross-examined.

SECOND WITNESS.

Elizabeth Thornberry sworn.—Examined by the *Solicitor-General*.

I am sister to the last witness John Hogan. I remember the night he was attacked. The cars were attacked convenient to Broadford in the county of Clare. I was sitting on the car with my husband and Mrs. Ryan of Scariff. There were three cars travelling together. The first thing that happened was to my car. One of the men came to my car and caught my husband by the coat, and my husband asked him did he want a lift, and he then threw himself into the car. He then put his hand about Mrs. Ryan's neck and drew her back upon my husband's knee. I heard him say he would like to be squeezing her. My husband told him "to let the old woman alone." I asked him "was he going far?" he said "not beyond this spot." He then got off the car and went back. There were three other men. I heard them passing my car, and one of the men said "to bone the first car." Did you know any of them?—[Witness identified the prisoners, observing, as she pointed them out, to each, you are worthy of the first of the rod, and you of the second.]—I do not know which of the prisoners said "to bone the horse." When that was said, one of the men went and caught the first horse. My brother was leading the first horse. He called for mercy, and I threw myself off my own car and went to his assistance. One of them held my brother and struck him as fast as he could, and another took up a stone and struck my brother in the ancle, and brought him to the ground. I had a whip in my hand, and when I saw him strike my brother with the stone, I rolled my hand in the whip and struck him on the forehead. That man was Timothy O'Brien; he was a small man. I drew a second stroke of the whip, and he turned round and struck me on the head and knocked a blaze of fire out of my eyes. I roared as loud as I could. There was a house quite convenient. Owen Liddy was the man who struck my brother. I surely saw Liddy strike my brother. I cannot say with what he struck my brother. No person struck my brother but those two. O'Brien struck him with the stone; for when I struck him he turned on me and struck me down by a blow on the breast. He then opened my bosom and searched for my pocket. I called for assistance as long as I was able. I had £11. 10s. I would have lost my

money, but leaving Limerick I put it in behind my back. This occurred on a Saturday, and I saw them the next Sunday night.

The CHIEF BARON here entered the Court.

Examination continued.

The men I saw then were two of the four men who attacked us that night. I saw them in Tomgraney barrack. Did you look at O'Brien's forehead when you saw him?—He had a mark on his forehead where I had struck him. O'Brien had the same clothes on as when he attacked me, but Liddy had not. A constable brought some clothes to me, which I knew to be the clothes Liddy wore that night. He brought the clothes after I had identified Liddy. About what hour in the evening did this occur?—I think it was about ten or eleven o'clock. It was a dark starlight night. It was a fine dry night.

CHIEF JUSTICE.—Was the man who jumped on the car with you either of the prisoners?—He was, Liddy.

Cross-examined by Mr. O'Hea.

Was it the darkest night in the year 1847?—There was many a darker night. It was a dark star-night. Did you see double that night?—No. You had a little change?—I had. Did you drink any thing?—Very little; only one glass of punch. Was it not a double charge?—I took no tumbler; I took only a glass. Did you take any porter?—No, I only took a bare glass of punch. Had not the persons on the car the same opportunity of seeing them as you had?—I was driving the car; and while he held back the woman, I was taking his dimensions. My side was to him. I turned round my head to see him. Will you undertake to swear to him from what you saw on the car?—I would bring him out of fifty men. Would you undertake to swear to him from what you saw on the car?—I would not. It is from what I saw of him on the road, not from what I saw on the car, I undertake to identify him. Was it a long scuffle?—I cannot say how long it was, for I was knocked stupid. I cried out, until I was struck a third time. Did you ever see Liddy before?—I never did. I never saw either of the men until that night. Was all your party sober?—Every person in the car was sober.

Solicitor-General.—Who were in your car?—Myself, my husband, and Mrs. Ryan. Owen Liddy passed my car to go to my brother's.

A Juror.—Did you tell the policeman what clothes Liddy wore before he brought them to you?—I did.

THIRD WITNESS.

David Flannery sworn.—Examined by *Mr. Bennett.*

I lived in Scariff in October last. I am a shopkeeper. I remember the night of the attack on Hogan. I met Timothy O'Brien.—[Witness identified him.]—I met him after ten o'clock. Do you know the place where Hogan was stopped?—I guess, from the description, that it was about a quarter of a mile from that I met him. I spoke to him. One or two others were with him; three, I believe. He knew me, and walked up to me, and laid his hand upon the reins of the horse I was riding. "Who are you?" said I. "I am such a person," said he; "you had no right to do such a thing to me." Did he say what that thing was?—He did not. What was it?—He owed me a debt, and I processed him for it. Why did he speak to you in that way?—I suppose he did not like the others to hear what he meant. I told him I could not avoid that; that I was about to close my accounts, and was obliged to process nearer friends than him. I said I was sorry to see him so tipsy. He said that was nothing to me. He then said at another time he would meet me on it. I suppose he meant he would pay me the debt. He then went off. Liddy was shoving him on; and he said, "I will not go with you, Liddy; I will go where I like." I did not know Liddy, but I heard his name used. They had no arms or sticks. His wife paid half the debt he owed me at the October Sessions following. I left them upon the road. I heard the next morning of the robbery. They were going towards Knockbrack, towards Broadford, at this time. I think there were four of them.

Cross-examined by *Mr. O'Hea.*

Was it a very dark night?—It was; for, although seeing Liddy that night, I could not identify him in the morning. I know O'Brien these ten years. He was steward of a man named Scanlan. I never heard of his being charged with any crime.

CHIEF JUSTICE.—Was he at this time in Scanlan's employment?—He was not. Scanlan was a road contractor. I knew O'Brien to be a most trustworthy man.

FOURTH WITNESS.

Constable *Allen Barr* sworn.—Examined by *Mr. Plunket.*

I recollect the night Hogan was attacked. I heard of it about

twelve or one o'clock that night; Hogan informed me of it. I saw Mrs. Thornberry that night. I arrested the prisoner O'Brien. I arrested him in three hours after. I got him on the road immediately on the spot where the occurrence took place. When I brought him to the barrack I observed the mark of a stick on his forehead. Mrs. Thornberry gave a description of one of the men and I arrested him. She did not describe O'Brien. She said she struck one of them with a whip, and if the man I had was one of them he should bear the mark on his forehead. I arrested Liddy at four o'clock that morning in bed in his brother-in-law's house. I wanted him to put on the clothes I found in the room he was sleeping in; he would not do so, he said he had better clothes, and that he would put them on. Did he say any thing as to whose the clothes were?—No, he did not. I brought the clothes with me and showed them to Mrs. Thornberry; she first described the clothes, and when I showed them to her she said they were the clothes worn by Liddy. She had identified Liddy before that.

Cross-examined by Mr. *O'Hea*.

What did she say about the clothes?—She said them were certainly the clothes Liddy wore. Did she say any thing about a cap?—No, but that it was a straw hat he wore. Did she say any thing about O'Brien wearing a cap? I think I heard something about a cap. Did she say one of the two men wore a cap?—I think she did. Did O'Brien wear a cap when you arrested him?—He did. Did she tell you O'Brien wore a straw hat?—No, she told me Liddy wore a straw hat. I think she said O'Brien wore a cap. As well as I recollect, she said it was a cap. I heard nothing about a black hat.

A Juror.—What was the description she gave of O'Brien's dress?—She said he wore an old frock coat and corduroy trowsers. Did you find a straw hat in the house when you found him?—Yes, he wore it until he came to another house, when he got a black hat.

Flannery was re-called.

CHIEF JUSTICE.—Did Mrs. Thornberry tell you about the hat O'Brien wore?—She told me he wore a black hat.

Mr. *Bennett*.—Was the debt he owed you paid?—One-half was paid. His brother-in-law said he would see it paid. Did you say

any thing since you left the table?—A man asked me what he wore. Did you go to Mr. Hynes?—I came up with his brother-in-law and went with him to Mr. Hynes's office. There was a general suspicion that the woman did not know the men.

The case for the prosecution here closed.

Mr. *O'Hea*.

Gentlemen of the Jury, I think in this case the only evidence identifying the prisoners cannot be relied on. That depends solely on Mrs. Thornberry. She has directly contradicted herself, for Flannery told you she told him O'Brien wore a black hat, and when the Crown find this contradiction, they attempt to assail the credit of their own witness, and do not produce Mrs. Thornberry to confront him. Recollect that this was a very dark night, and that Flannery, a man who knew the prisoner before, tells you he could not identify him though he knew his voice. How then can you trust to her accuracy? He knew him for ten years, and could not recognise him until he had spoken to him, and yet she undertakes to identify him. The identity of the prisoners rests upon her testimony alone; and will you, because those persons, living in the neighbourhood chanced to be on the road that night, condemn them on such testimony to transportation?

CHIEF JUSTICE.—What contradiction is there between her evidence and that of Flannery?

Mr. *O'Hea*.—The policeman says she described O'Brien as wearing a cap; and Flannery says she told him it was a black hat.

Allen Barr was here re-called.

CHIEF JUSTICE.—Did Mrs. Thornberry describe the dress of O'Brien?—No; she said one of the party wore a cap. Did she describe the dress of Liddy?—She did; she said he wore a straw hat.

Mr. *O'Hea*.—Did she describe O'Brien as wearing a cap?—She did.

CHIEF JUSTICE.—Did she describe O'Brien as having a cap?—She said one of the party wore a cap. When I found O'Brien on the road he wore a cap. She said another of the four wore a cap.

To a *Juror*.—I found him on the road about one o'clock. He appeared to have drank something. I searched him, and found nothing on him.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, in this case the prisoners are indicted for a very serious offence ; and there is no doubt, from the detail given of the transaction by the witnesses, there was a most outrageous violation of the law. It appears three cars were on the road coming from Limerick ; upon the first car was Hogan, and two females. There was a second car, which it is unnecessary to make any observations about, no evidence having been given respecting it ; and on the third car was Thornberry, his wife, and Mrs. Ryan. The first car was stopped, John Hogan was beaten and struck with a stone, which inflicted a wound, in consequence of which he was confined for six weeks. The only question depends upon the testimony of Elizabeth Thornberry, who identifies both the prisoners. But her testimony is impeached ; and you will say whether her testimony as to both or either of the prisoners is corroborated. She tells you one of the men jumped into the car she was in, and took some liberties with Mrs. Ryan, but that she would not undertake to identify him on that occasion. —[His Lordship recapitulated her evidence.]—She gives a description of the person of Liddy and of his clothes ; and you observe she is perfectly positive the prisoners were with the party. Then is she corroborated ? So far as Liddy is concerned, his dress is described by her ; and he declines to put on that dress which he had worn. But there is a further circumstance : when he left the house in which he had been arrested, he had a straw hat on, and at another house he borrowed another hat. Now under these circumstances, it would be almost miraculous if she were found to be mistaken.

With regard to O'Brien the case is somewhat weaker ; for Flannery says she described O'Brien to him as having worn a black hat. Now the policeman told you that she said one of them wore a cap, but he does not say she said that person was O'Brien ; but see whether this circumstance does not corroborate her testimony. Flannery met O'Brien on the same spot, and he stopped his horse ; you have him then in company with those persons doing an act of a very questionable character. He was then in company with four others, going in the direction of Knockbrack, and O'Brien remonstrates with his companion, and calls him Liddy. It is for you to say whether these circumstances are or are not calculated to establish the credit of Mrs.

Thornberry. She may have made a mistake, but I am quite sure she is not perjured. There is a most remarkable circumstance also for you to take into your consideration: she states she struck one of the men across the forehead with a whip, and when arrested, O'Brien had a mark on his forehead.

The jury, without leaving the box, returned a verdict of Guilty.

SENTENCE.

The CHIEF JUSTICE.

Prisoners, this case is similar to a great majority of the cases in which we have had to administer the law since this Special Commission was opened. This prosecution has been instituted to protect the humbler classes against the marauding spirit which pervades the entire of those disturbed districts. There is but one circumstance we have to regard in your case—that is, the amount of punishment. It is evident you were joined with others for the purpose of perpetrating a robbery on whomever you met, and I have no doubt that if Flannery had been unknown to you he would have been assailed; but in consequence of your not having been armed, we are disposed in some slight degree to mitigate the penalty of your crime. It must, however, be that of transportation; for besides assaulting this man, and depriving him of his property, you, Liddy, inflicted on him three or four most dangerous wounds, and you, O'Brien, struck him with a stone, which caused an injury which confined him for several weeks; and that assault is followed up by a brutal and unmanly attack on the woman by you, O'Brien. You struck her on the head, and not having succeeded in overcoming her by that blow, you, a man, unworthy of the name of man, felled her to the ground with a blow in the breast! The laws must be vindicated. The poor need protection, and they shall have it. We will preserve their properties from violation as carefully as the property of the highest and richest in the land. Having regard to all the circumstances, the sentence of each of you is, that you be transported for ten years.

Same day—three o'clock.

TRIAL OF PATRICK DUNNE AND OTHERS,

FOR CARRYING AWAY ARMS.

Same Jury.

Patrick Dunne, John M'Namara, John Cuneen, Patrick Cuneen and Michael M'Cormick were given in charge on an indictment charging them with having, on the 9th of November 1847, at Caloor, in the county of Clare, carried off a gun, the property of Michael Hogan.

FIRST WITNESS.

Thomas M'Inerney sworn.—Examined by the *Attorney-General*.

I lived in Caloor with Mr. Enraght in September last. I was watching green-crops for him at that time. I recollect a party of men coming to me between nine and ten o'clock at night, in or about Michaelmas last. I know the persons who came to me on that occasion.—[Witness identified the prisoners as being of the party, and also named one Pat M'Namara, as being of the party.]—They all came to me together; those five men and another. They asked me was the gun in Hogan's orchard. I told them to the best of my belief it was. When I bursted the gun it was sent out of Enraght's orchard into Hogan's. I had the gun off and on for a fortnight when I would want it. It was only across the road, to the boy who was minding the orchard. I had it three or four days before that, I believe. When I said the gun was in Hogan's orchard, they told me to come with them for it. I told them I had no business going; for if I left, John Enraght would make me accountable; or if he did not, the police would, for he or they are there every night. I went out of the garden with them into Bob M'Mahon's garden; that was the way to Hogan's orchard. I saw no arms with them. I did not go any further, for I persuaded them to let me go; and Paddy Dunne told me to come back and have an eye to the police. I came back and stopped in the garden near the road. When they left that garden they were about a quarter of a mile from Hogan's orchard. They came back to me about twelve o'clock. Six of them left me and came back to me. The five prisoners were of the party who came back to me. They brought back

the gun with them. Every one of them had apples. They showed me the gun, and told me if they thought they would have got such a gun as that they would not have gone. John Cuneen wanted the lock of it for a gun he had stocked. I know the gun; it belonged to Michael Hogan.—[A gun was then handed to witness, which he identified as being the gun in question.]—The orchard is in the county of Clare, near Six-mile-bridge.

Cross-examined by Mr. O'Hea.

I suppose they thought you as well able to go as one of themselves?—I suppose so. Were you shocked at such a thing being proposed to you?—Very little. What objection had you?—My objection for going was for fear the police or John Enraght would come down on me. Did he suspect you?—I make no doubt but he did. Used he to watch you?—He used, would you blame him? Did he ever catch you asleep?—He did often. Which of them did you suspect of telling him?—I did not suspect any man, but himself or his mother. I never told him that any of the prisoners were setting him to watch me. Would you know a good lock?—I would. Did you ever fire a shot?—I often did. Did you ever blacken your face?—Never. I never was charged with it. Were you never charged?—I might; but if I was, it was wrongfully. About Cratloe they said you were a bad boy?—They would not say that, for they were the same themselves. Did you tell this next day to your master?—I am sure I did not. Did you tell the names the first time?—I did not. I was not asked to name them the first time. I told it the second time. Were you dismissed from your employment?—I was; my quarter was up. Did you burst the gun?—I did. How?—I was shooting plover. Before you were employed by Enraght, what did you do?—I was earning my bread. I never went into Tipperary. I was often in Limerick. Did you know Ryan (Puck)?—I heard tell of him.

CHIEF BARON.—Had you any mark on the gun?—I would know it any where.

SECOND WITNESS.

William Griffin sworn.—Examined by the *Solicitor-General*.

I was minding an orchard for Michael M'Namara in September last. I had a gun given me by M'Namara, to mind the orchard. I would know that gun.—[Witness identified the gun.]—M'Namara had two orchards. I minded one. This is Michael Hogan's gun. Michael Hehir brought it to me first. The night the party came was some time in the month of October. I was up in the house, after walking

the orchard. The party came to the house, and began to throw stones at the window. They demanded the gun. I sent out the gun to them. I took the gun, and stood in the middle of the floor for some time. I would not give them the gun until they said they would burn the house over me, and I then laid it on the window. There was a large shutter to the window, and no glass. I laid the muzzle on the window. I saw the man who came to take away the gun. His name was John M'Namara.—[Witness identified the prisoner M'Namara.]—I did not know any of the others. They loaded themselves with apples.

Cross-examined by Mr. *O'Hea*.

Did you tell the magistrate to whom you gave the gun?—I do not know. Did you name the man when making your information?—I did not. Why did you not tell then?—Because it was the second attack they made on me for the gun. Did you tell Mr. O'Brien?—I told him in Limerick. Did you throw out the gun to them?—I did not. They broke the shutter, and I laid it on the window. Was M'Inerney talking to you about any person?—He never spoke about any body.

Mr. *O'Hea* here read witness's information, in which he stated that he threw the gun out of the window to the party.

Did you tell the magistrates you laid it on the window?—I did. I did not tell them I threw the gun through the window. I never threw it out. I did not say so to Mr. O'Brien, or to any magistrate. I had the gun five days. It was at night they came to me before. They came about the 20th of August before that, for the gun. Michael Hehir came to me after I had fired two shots, to take it away from me. Mr. O'Brien read the information to me.

CHIEF BARON.—Was the gun burst when you had it?—Not the first time.

THIRD WITNESS.

James Hartigan sworn.—Examined by Mr. *Bennett*.

I was in Michael Hogan's house in the orchard the night the gun was taken. John Kilmartin and William Griffin were in the house with me. The orchard man came for me to draw apples, to go there the night before, so as to draw them early in the morning. A party came to the orchard, pelted in stones and knocked off my cap. They called out to fire when they came to the door. John M'Namara, Patrick Cuneen, Patrick Dunne and John Cuneen were of that party.

I saw but four, there were others about the house, but I did not see them. I did not see the other prisoner there. They broke the window with stones; after they broke the window they were there a considerable time, and they demanded the old musket to be handed out to them. William Griffin handed it out through the window to them. They took nothing else but the gun. They did not demand any thing else. I knew those four men before. I know them these five or six last years. I would not know the gun. They took the gun away with them.

Cross-examined by Mr. *O'Hea*.

Did you tell all this to Mr. O'Brien the magistrate, the first time making your information?—I did. The first time you made an information?—I told him about none the first time, I waited for the second time. I was arrested about the gun. Hogan insisted on getting the gun. I said the party came there to take it. I did not tell him who the party were. The magistrate did not ask me if I knew any of the party. Were you swearing here before?—I was never here swearing against any man, but there was a man swearing against me, and against a brother of mine. Did you not see five men?—No I did not. Did you go out?—No. What hour was it?—About twelve or one o'clock; I was sitting by the fire. The door was opened by the orchard man. Did they pelt stones at the door?—They did. After they pelted in the stones I screeched to close the door. John M'Namara pelted a stone, that was the only stone I saw. I was looking out through the door.

Re-examined by Mr. *Bennett*.

What brought you here?—He was swearing against me and my brother for robbing him, and he was proved perjured, and we were never put upon our trial. That was five or six years ago.

A Juror.—Where was the fire?—At the end of the house. If the fire was at one side and the door at the end of the house, how could you see four men outside?—I could see any thing from where I was sitting. The door was about the middle of the house, not more than five or six feet from the corner. It was a middling bright night. Griffin handed out the gun. I saw him put out the gun. I do not know who he handed it to. I do not know was there any one at the window to take it. I saw no one.

To Mr. *Bennett*.—There was only one room in the house, the fire-place was at one side. The door opened in. The door opened from me, about five or six feet from me; I could see plainly from where I sat. It was very bright, the stars were up. They passed up quite convenient to the door before they threw the stones. The fire was lighted with sticks. There was no moon-light. I knew them by the light of the fire and the stars, they were no strangers to me.

FOURTH WITNESS.

Constable *Thomas Corrigan* sworn.—Examined by Mr. *Plunket*. I know John M'Namara. I searched his house. I found two guns there.—[Witness identified the gun produced as one of them.]—The barrel of the gun was hid in the thatch in one part of the house, the stock in another. I found no lock. John M'Namara said he bought the gun from a man named Considine, who went to America six months before. I searched the house in November last. I found another gun in the house; it was locked in a box. I saw the orchard-house. It was not more than fourteen feet long, and about one-half as wide. A man sitting at the fire would be almost within two feet of the door. I saw no fire-place in it.

FIFTH WITNESS.

John Kilmartin sworn.—Examined by the *Attorney-General*.

I was in the orchard the night the men came there. I would not know any of them. I saw no man that night.

Cross-examined by Mr. *O'Hea*.

I was sitting with my back to the door. Hartigan and Griffin were there. I do not know how Griffin gave out the gun; my back was to him. The door was open when they came to the house; they ordered it to be shut. I shut it. Hartigan's face was to the door. I got up, and pushed the door to with a pitchfork.

To the CHIEF BARON.—The door was about the middle of the side-wall of the house. I could look out the door if I was sitting at the other side of the fire; the fire was in the corner of the gable farthest from the door. It was a short little house; the door was about the middle of it.

To a *Juror*.—The door opened from the fire-place. I sat upon the side of the bed, and took up a pitchfork and closed the door. It was a

pretty large door. There was a good light from the fire. Sticks were burning, which made a good light.

SIXTH WITNESS.

John O'Brien sworn.—Examined by the *Solicitor-General*.

I am the resident magistrate in the district where this outrage occurred. I took the informations in this case. John M'Namara was in custody for having the gun in his possession. I did not ask Hartigan who the parties were; my impression is that I asked Griffin. He said he did not know any of the parties.

Cross-examined by Mr. *O'Hea*.

If the man swore he threw the gun out of window, was it taken down?—I am sure those are the words he uttered. I have no doubt he used those words taken down in the information.

Mr. *O'Hea* then addressed the jury.

Gentlemen of the Jury, I shall not make any remarks as to the first witness; you will judge of his testimony from the character he has given of himself. As to the other witnesses, what is there to detract from their evidence? You have Griffin swearing in his information that he threw the gun out of the window, through fear of his life; and observe that he now wishes to fasten the charge upon M'Namara, in whose possession the gun happens to have been found, although he had previously given a different account of the transaction. Further, he told Mr. O'Brien that he knew the men, and he now tells you he only knew John M'Namara. Then as to Hartigan; you cannot rely on his testimony. Consider the position in which he was placed; a dark night, and he sitting in the light of a fire; surely that would have prevented his seeing outside and recognising the persons there. Further, as to the identity of the gun, you have no satisfactory proof that it was the gun that had been taken that night.

CHARGE.

The CHIEF BARON.

Gentlemen of the Jury, the prisoners are indicted for taking away a gun, the property of Michael Hogan. The question you have to consider is whether those persons took the gun in the manner described; because if they did, they are within the provisions of the Act upon which this indictment is founded—therefore the question is one entirely of identity. With respect to one of the prisoners, there is no evidence

of his identity, except the evidence of the first witness ; and he does give his evidence under circumstances from which I think it but fair he should be treated as an accomplice in the offence with which the prisoners are charged. I do not say that he is, but it is right in this case to treat him as such. Now, with respect to the credit to be given to accomplices, the way a jury are told to treat them is this : unless the witness is corroborated in matters of fact referring to the party charged—that is, unless he is corroborated in matters applying as well to the criminal as to the crime, his evidence should not be acted on by a jury. It is not enough that the witness who so comes forward should state the circumstances as deposed to by the other witnesses ; your own good sense will tell you that persons coming forward under such circumstances will frame their testimony upon the facts of the case. Therefore, in order to induce you to give credit to the story, there must be testimony applying to the criminal as well as to the crime.

Now this testimony is uncorroborated as to the prisoner M'Cormick. I cannot however withdraw his case from you, but I could not advise you to find against him on that evidence alone, even though you should think it corroborated with respect to the other prisoners.

Then, as to the others. With respect to John M'Namara, it does receive corroboration both by the testimony of Griffin and Hartigan, and in the evidence with respect to the finding of the gun. The corroboration with respect to Griffin and Hartigan is direct corroboration ; and as to the gun, it may be considered circumstantial.—[His Lordship recapitulated the evidence of those two witnesses.]

Now, with respect to the gun, there is evidence which you should take into your serious consideration. The gun is proved to have been in the possession of Griffin ; he positively identifies it as being the gun which he delivered to John M'Namara ; and Corrigan tells you he found it in M'Namara's house, under circumstances showing concealment. The account the prisoner gave of the gun at the time it was found was, that he had got it six months before from a man going to America. It is not distinctly shown when the transaction occurred ; but his account, that he got the gun six months before, is clearly false ; and a false statement is always to be taken strongly against a prisoner. Then let us see how far this testimony is borne out by the testimony of the other witnesses. With respect to the other prisoners, that testimony derives corroboration only from the evidence of Hartigan. He alone speaks as to the other three prisoners. You will observe,

that so far as relates to those three prisoners, there would be distinct evidence unconnected from the accomplice.

Now, you have heard Hartigan cross-examined as to the manner he had of knowing those prisoners, and the account he gave originally of the transaction. He does not appear originally to have disclosed the names of the persons concerned in this transaction. He was also cross-examined as to his manner of identifying them. You have heard that evidence, and it is for you exclusively to say whether you think that a person seated near a fire, and looking out in a star-light night, had sufficient means to enable him to identify those persons. This appears to have been his position : the fire was at one end, and the door in the middle of the house ; the fire was nearer to the corner farthest from the door, consequently there would be a better opportunity of seeing them. On the other hand, he was farther removed from the door, and farther from the persons to whose identity he deposes. The policeman says he was immediately opposite the door, and in proof of that, he says a stone struck him on the head. You will therefore consider how far he was enabled to see them from the position in which he was placed ; and you will also consider how far his testimony is shaken by withholding the facts, although he was not questioned upon that.

With respect to Griffin, his testimony is impeached upon similar grounds, but more strongly ; for he in his information states that he threw out the gun, but he now says he placed it on the window. You will consider whether he might not have used that expression under the influence of fear ; and you will therefore say whether you consider it at all material. You will deal with the case under all the circumstances.

The jury retired, and in a quarter of an hour returned a verdict of Guilty against John M'Namara. Patrick Dunn, John Cuneen, Michael M'Cormick, not Guilty.

SENTENCE.

The CHIEF JUSTICE, in passing sentence, addressed John M'Namara as follows :—

John M'Namara, the jury have found you alone, of five persons who were indicted along with you, guilty, and they have acquitted the other persons indicted. It is now for you to hear the sentence of the law ; and I consider your case as one which affords an opportunity, of which I am ever ready and anxious to avail myself, of pointing out to the

public—of pointing out to each of the parties engaged in these outrages by which the country is devastated—matters of most solemn, most awful import. You have been convicted partly by the evidence of your accomplice, the man whom you yourself furnished with the means of bringing you to justice. You have now been made amenable to the laws by the treachery of your own companion, your own friend, who has betrayed you; for by your conduct you enabled him so to do. You trusted in him, and he violated that trust; he sacrificed your liberty in order to secure his own. This is a subject of awful consideration, and of deep moment to all persons associated for the commission of crime; and it is with a view of inducing them to abandon those desperate and dangerous undertakings, and to desist from continuing this infliction upon their peaceable and loyal fellow-subjects, that I now dwell upon the result of this case, in the hope that they may be warned by the fate that now awaits you. It is too well known that the strength of bodies confederated altogether depends upon the bond of fidelity that unites them to each other. A man cannot singly and separately commit crimes so dangerous, so generally injurious to society, as those committed by associated bands. In this country, it unfortunately being felt that union is strength, the wicked and evil designing endeavour to combine this strength for the purpose of creating societies, in the hope by numbers and arrangements to effect their purposes. They are bound by obligations, first, to be true to each other until death; which they suppose will confer the same security as in the case of persons associated for lawful purposes. They madly suppose that men who are under these obligations for criminal purposes will be bound to each other: a body so formed proceeds in its operations, plunders and levies contributions, and obtains arms by any means, no matter what the degree of violence, force or fraud used; and the society appears for a time to prosper, as if the day of change were never to come. But wickedness will not always prosper; some of the companions in guilt will be disposed to save themselves at the expense of others. When once suspicion has arisen, the only question then is with each man, shall I be first to betray my associates, or shall I wait to be betrayed by them? whether is it better for me to prosecute the other, or to wait to be prosecuted by him? should I lose my own life or liberty, or should he lose his? Can any thing be dearer to a man than life or liberty? Will any man prefer another's to his own? This process of instinctive reasoning leads at once to the conclusion, that it is much better to become an approver than suffer as a criminal, and accordingly he

determines to make reparation to the country and to sacrifice his friends and companions in guilt. He does so without hesitation or remorse. Accordingly, this day you saw one of your companions deposing against you with as light a heart and unconcerned a manner as if he were examined on a civil-bill process. How is it possible that any persons, seeing this, will entrust to any man dominion over his liberty or his life? In my opinion, his conduct is more allied to madness, than any other infirmity of mind which I can liken it to, by becoming the participator in the guilt of another to enable him to become the arbitrator of his liberty and his life. He gives to a fellow-creature a power which he should give no fellow-creature, the power over his life and liberty. This is what has been done, is now doing, and will be done, as the law remains; and while it so remains who can hope to escape from punishment? Though this advice comes from the great authority of the Bench, it is but the admonition and advice which your best friend would give, and it is not of less weight because it proceeds from the Bench.

In reference to the sentence we shall pass upon you for the crime you have committed, we do not find that you were armed; having regard to that, we will pass a comparatively lenient sentence, which is, that you be imprisoned for eighteen months.

At half-past five o'clock the Court adjourned.

Saturday, January 15.

Fourth Day.

SENTENCE ON PATRICK RYAN AND JAMES HAYES, FOR THE MURDER
OF MR. WATSON.

The Judges took their seats at ten o'clock.

The prisoners *Patrick Ryan* (Small) and *James Hayes* (Butt), were brought up for sentence.

The Clerk of the Crown having asked the usual question, if the prisoners had any thing to say why sentence of death and execution should not be pronounced upon them according to law, both prisoners strongly protested their innocence.

The Judges then assumed their black caps, and the CHIEF BARON, in passing sentence, addressed them as follows :—

Patrick Ryan and James Hayes, you have been found guilty of the crime of aiding and abetting in the perpetration of wilful murder. When I refer to the circumstances under which that crime was committed, I do so not with the intention of increasing the miseries of the situation in which you now stand, but because it forms part of the obligation which we discharge here, to present the facts of the crime in connexion with the punishment, as an example for the instruction and warning of others. A gentleman, Mr. Watson, was employed as the agent of the proprietor of a landed estate in this county. He left his home after the hour of breakfast ; he proceeded on horseback along the public way, without suspicion of danger, his horse moving slowly. One of you, Patrick Ryan, with another person, who is not here, only because he has been left for execution in another county for another similar crime, assailed him. You stopped his horse : he fell to the ground. One of you beat him with the lock and butt end of a gun ; fractured his skull ; and you left him, mangled, speechless, and senseless, from wounds, of which he shortly afterwards died. You, James Hayes, were not present at the spot where the murder was committed ; but, in contemplation of the law, you were present at the crime ; for you attended to watch and to aid. You were so placed as to be near enough to give your assistance, if required ; or to warn your accom-

plices of the approach of those who might have detected them in the perpetration of the crime, and to aid them in their escape from justice. In the eye of the law, therefore, you were guilty of the offence in which your accomplices were more actively engaged. To the law the life of each of you is forfeited.

There are some circumstances, peculiarly distressing, connected with this outrage. Mr. Watson left his home and family in health and strength, without suspicion of mischief. In less than half an hour his wife and daughters were summoned to attend him. They found him a mangled body in the last struggle of life! If I consulted my own feelings I should not proceed further in alluding to this atrocity; but for the interests of all who are listening to me, or who may learn the sentence which we are about to pronounce, I feel bound to suggest some reflections upon the nature of this crime, and upon the result which must happen if its progress be not arrested by the strong arm of the law, and by what is essential to give the law its due power—the co-operation of all the various classes in the community. Of all the various forms that the dreadful crime of murder assumes, there is, perhaps, none in itself so hateful—so loathsome—so abhorrent to our every feeling, as that of assassination; none so base in its cowardice—none so deep, and dark, and cold, in its deliberate malignity—none so effectual for its terrible purpose. Against the arm of the assassin none can be safe; no caution or foresight can effectually guard; no strength of arm—no bravery of spirit can sufficiently protect against the foe who comes unawares. The assassin may track his victim for days, for weeks, for months; he may watch his goings out and his returnings home; he may learn his haunts of business and of amusement; he may select his own time, his own place, and his own opportunity; he may choose the spot of his own ambuscade, and make the attack when his victim is without defence, without suspicion of danger, and without the possibility of resistance. No wonder that in all ages and nations this crime has been the object of horror and execration. Is it not lamentable to think that when it is nearly banished from every country on earth enjoying civilization, it now exists in the community in which we live?

What are its results to society? It makes the entire sphere within which it operates one wide circle of suspicion, distrust and terror. In the present instance it was levelled against the agent of a landlord, and was applied for the purpose of controlling the owner of property in the exercise of the rights given to him by the law. Its effect applied to that class must be to leave the owner of landed property

no alternative between becoming an absentee from his country, and abandoning the enjoyment of his rights and the discharge of his duty on the one hand, or on the other, of remaining on his estate at the peril of his life. But as I have said before from this place, the evil does not stop here. The landlord or the agent may be the first victim, but assuredly the next will be the farmer or the peasant. This is not mere inference or probability; it is a truth attested by actual facts proved before us. Since we commenced the labours of this Commission, we have left for execution in another county three men, each convicted of the murder of a farmer. In one instance the motive which suggested the crime was one of private enmity: the object was to punish the murdered man for having summoned a person before a Bench of Magistrates for a brutal assault on his servant. In each of the others the crime was committed on account of a claim to land. As this species of atrocity advances, it will dictate to the farmer the wages which he shall pay to his labourers, and the price at which he shall sell the produce of his farm—nor will it be confined to rural districts—it will be applied also against the shopkeeper and the manufacturer, in dictating to them the prices at which they shall sell their goods, or the remuneration which they shall give to their workmen. It will be applied to control conduct in every relation of social life. Therefore, I say, that all classes of the community are called on to contribute their utmost exertions to arrest the progress of this dreadful calamity. And if there be any, of any class, even of your own, wholly free themselves from participation in guilt, who are prompted, not by guilty, but by erring sympathies, not to justify or excuse, but to palliate and extenuate such crimes as these, I would suggest to them to read the records of the proceedings of this Commission: from these they may learn that they—that all who can act upon others by counsel, by advice, by influence, by authority,—are called upon by every duty which they owe to themselves, to society, to the laws, to religion, to assist in wiping away from our country the stain of this foul and dishonouring crime.

Circumstances appeared before us in this case indicating the unhappy condition in which districts affected by the prevailing crimes are now placed. This murder was perpetrated in the broad glare of a summer morning, when many people must have been abroad, upon a public highway, near to several bye-roads, and not far from the habitations of some of the peasantry. You, the assassins, manifestly depended, if not on sympathies which would prevent detection, at least on terror and intimidation operating on those who might other-

wise be stimulated to assist in your pursuit, and in bringing you to justice. You thought, perhaps, that you were unseen. Let those who are tempted to such crimes remember, that though they may believe they are not observed by man, there is an All-seeing Eye which they cannot escape. Let them assure themselves that the finger of Providence will be found pointing to the track of the criminal, and tracing it from the scene of his crime to the spot in which he will be at last found, and from which he will be drawn to justice. How often does it happen, in this very crime of murder, that circumstances which to us appear purely accidental, are presented by Providence as the means of securing detection and punishment? In the present case, the circumstances of two young boys straying—one from school, the other from some other occupation—have led to the means of fastening guilt upon you. Perhaps, without these, there might have been some difficulty in accomplishing your detection. What a warning does this furnish!—what an example of the fate which ultimately awaits him who dips his hands in his brother's blood!

It only remains for me now to pronounce upon you the awful sentence of the law. Let me exhort you, as it has been my melancholy lot to implore of others, to turn your thoughts from the world which you are about to leave. Mercy cannot be extended to you here; but remember that there is a quarter in which it will not be denied you. Remember, that you have the promise of your God, that if you ask for it with a proper spirit, you will receive it. Reflect upon your crime. Ask pardon from Heaven, in the true spirit of repentance and contrition; and you may surely hope, deeply as you have been steeped in guilt, that although here you cannot obtain it, the God of Mercy will award it to you for the life that is to come.

His Lordship then sentenced the prisoners to execution on the 15th of February.

Same day—half-past eleven o'clock.

TRIAL OF MICHAEL BUTLER AND MATTHEW
HOURIGAN,

FOR THE MURDER OF PATRICK CLEARY.

The prisoners joined in their challenges, and having challenged twelve peremptorily, the following jury were sworn:—

Ralph Westropp.	Frederick Blood.
James Blake Butler.	Stephen O'Halloran.
John Crowe.	Alexander Bannatyne.
William Arthur.	John B. Knox.
William Adams Brew.	John Macbeth.
James O'Dwyer.	Ralph Cullinan.

The prisoners were then given in charge for the wilful murder of Patrick Cleary.

The indictment charged that Michael Butler did, on the 6th of November 1847, at Gurtnaglough in the county of Clare, shoot Patrick Cleary with a pistol, and that Mathew Hourigan was feloniously present, aiding and abetting.

The second count charged that a person unknown had fired the shot, and that the prisoners were feloniously aiding and abetting.

The *Attorney-General* stated the case for the Crown.

Gentlemen of the Jury, the prisoners at the bar stand charged with the murder of Patrick Cleary; and it becomes my duty to state the circumstances under which that brutal murder was perpetrated. I may be justified in calling it a brutal murder; of that no doubt can be entertained. The only question for you to decide is, whether the prisoners at the bar, or either of them, are guilty of that offence.

Patrick Cleary was a man in humble circumstances; he was a mechanic or dealer; and, unfortunately for himself, he had been the subject of some Whiteboy outrage previous to the Spring Assizes of 1847. At those Assizes in this town he came forward as a public prosecutor against some person, in consequence of which, as far as we are able to ascertain, he became an object of hatred and attack to several misguided people in this county. Another outrage was com-

mitted upon him, and he and his wife came forward and instituted a prosecution at the last Summer Assizes of this county. I state these circumstances to enable you, if possible, to determine the motives by which the perpetrators of this outrage were actuated.

In November 1847, Patrick Cleary had occasion to go from Limerick to Broadford, and on the 6th of that month he left Broadford about six o'clock in the evening on his return to Limerick; he had not proceeded far on his way when he was overtaken by two men, one of whom immediately discharged a pistol at him; and of the wound inflicted by that pistol, after languishing for about a fortnight, he died. That this wound was the cause of his death there can be no doubt. Immediately after the outrage he made a sworn information. Generally speaking, an information sworn in the absence of the accused, cannot be given in evidence against them: but if the accused be arrested, and the prosecutor acknowledges it, and reiterates the charge in the presence of the accused, and cannot afterwards come forward on the trial; under such circumstances, these sworn informations are properly receivable in evidence against the accused. Such were the circumstances of this case.

Immediately after, on the night the outrage was committed, the prisoners were arrested, and the next morning they were brought before the magistrates, and in their presence Cleary reiterated the statement he had made in his information; which was, that Michael Butler was the party who fired the shot, and that the other prisoner was present at the time. In addition to this, a witness will be produced, who will prove that he saw them on the spot, and that he saw them running away; that witness will identify Butler.

Further, the law provides that when a man is about to depart from this life, and about appearing in the presence of his God, his declarations in such case are receivable in evidence, because they are conceived to have been given with as much solemnity as if made under the sanction of an oath. It will appear in evidence before you, that immediately before his death, when he was aware that he was dying, and that that there was no chance of his recovery, under such circumstances he solemnly declared that Butler was the man who fired the shot, and that the other prisoner was present on that occasion; and that he could make no mistake about the matter.

The facts of the case are very short, but they represent the awful state to which this country is reduced. The deceased was a man in humble circumstances; a man, so far as we are able to discover, against whom neither of the prisoners could have had any enmity:

but he had rendered himself the subject of general hostility, because he came forward to discharge that duty which he owed to society, under the solemn obligation of an oath. I do not make these observations, gentlemen, for the purpose of affecting your judgment. This case will be submitted to you, and it will be for you to say whether you can safely come to the conclusion, that Cleary had the means of knowing and identifying the prisoners; bearing this in mind, that neither of them will be identified by any other witness. If you should entertain any doubt of the guilt of these unfortunate men, who are now placed on trial for their lives, under the circumstances I have mentioned, it will be your duty to give them the benefit of that doubt. If, on the other hand, you are satisfied, beyond a reasonable doubt, of the guilt of the prisoners, it will be your duty to find a verdict accordingly.

FIRST WITNESS.

Patrick Mulqueeny sworn.—Examined by the *Solicitor-General*.

I live near Broadford, in the county of Clare. I know Mr. Bentley's gate, at Hurdleston, near Broadford. I remember the evening of Saturday the 6th of November. I was on the road that evening, coming up the street of Broadford towards Limerick. I heard some person say it was about half-past five o'clock. It was dark, very dark. When going towards Mr. Bentley's grand gate, I heard a person walking quickly after me. I looked back. I knew the person who was following me. It was Mick Butler, I think.—[Witness identified the prisoner Michael Butler.]—Butler lived at Violet Hill. I cannot say exactly how far it was from the place of the murder. It is scarcely half a mile from the place where I saw him. He did not pass me by. I stepped on smart, and exceeded him. I went on, leaving him behind me. When I went on a little further, I overtook another man. I had never seen him before. It was a good way from where I met Butler; not less than half a mile. I was going still in the direction of Limerick, and he was going in the same direction. When I passed this man by, I heard a shot fired, and immediately after the cry of "murder." The man I had overtaken was going in the same direction with me. I had passed him on, and then I heard the report of a shot, and the cry of "murder." I looked back, after I had heard the cry. When I looked back, I saw the shadow of two persons running off the road. I did not see them on the road. I could hardly see them. I could not say whether they were men or women. I stood on the spot. I was in dread to come up or down. Three policemen came up to me, from the direction of Limerick, going

towards Broadford. When they came up, I doubled back along with them to where the man was. I think he was nearer to me than the place I saw the men running from. He was lying on the side of the road. The place he was lying in is in the county of Clare. I do not know who he was, but he was the man I had overtaken and passed by. I afterwards heard he said his name was Pat Cleary; but I did not know him. The police sent me to the barrack, to report to the serjeant.

Cross-examined by Mr. *O'Hea*.

You did not make your information until Monday last?—No. Were you before the magistrate?—I was before the Stipendiary in Broadford, and he asked me did I see any person shooting the deceased. I said I did not. Were you more than once with the magistrate?—I was taken again before him the following day, and he asked me who I met on the road. I was not asked that question the day before. When I was asked who I met, of course I should tell. You told the police that evening?—I did not. You never swore your information until Monday last?—I am not sure was it last Monday. I was asked several times about it by Mr. Bentley; but was only once sworn. When asked the question, did you not deny you saw Butler on the road?—I did, until I was sworn. Was it a dark night?—It was a very dark night. Was it not so dark that you could not distinguish the persons you saw running?—Because they were a good way from me. Did you tell the police that evening you saw Butler?—I did not, because I thought he was too far from the place where the man was shot to have any hand in it. When did you tell it?—I never told I had seen him until Mr. Bentley had asked me. The night you met the police you did not tell them you saw Butler; was it because the place you saw Butler was at so great a distance from where the man had been shot, you thought he could have nothing to do with it?—It was certainly. How far were you from the place where the man was shot at the time you heard the shot?—Ninety-six yards. The police and I measured it. You said the first time you were asked who the man was you met, “I think it was Butler;” why do you say “I think?”—Not being able to speak correctly, I suppose I said that. Have you any doubt?—I have now no doubt but that it was Butler.

A Juror.—What distance did you first see Butler from the place where Cleary was shot?—I think it was about half a mile.

SECOND WITNESS.

James Fleming sworn.—Examined by Mr. *Bennett*.

I am a sub-constable of police. I was stationed at Broadford in November last. I was on duty at the time on the night Cleary was shot. Sub-constables Armstrong and Leech were with me. I heard no shot. Armstrong is in fever. Leech is not here. Armstrong or Leech, I think, told me that a man was shot. We doubled and came up to Cleary; he was lying on the ground, with his back to the wall, on the road side; it was between five and six o'clock in the evening. I did not know Cleary at the time. Armstrong was about three perches before me when he called me. When he called me, I went up immediately. Did you say any thing to him?—I asked Cleary what was the matter with him; he told me he was dead. What did he say as to his being dead or dying?—I asked him what was the matter with him, and he told me he was shot. What did he say about his own condition?—I could not swear that. Do you know Mulqueeny?—Right well. When did you see him?—Not until after I had seen Cleary. Describe the state Cleary was in.—He was lying down, a little on the side of the road, when I came up to him; his legs were stretched out on the road. I asked him what was the matter. He told me he was shot. Did you try to see where he was shot?—I did not, for he could not bear me to touch him, until we went down to the barrack. After I had questioned the deceased, I turned round and saw Mulqueeny with two other men. Mulqueeny was standing within two yards of him. There were police there besides?—There were. What did you then do?—We took Cleary to the barrack. His shirt and waistcoat were burnt. I saw where the ball went into the nipple of the left breast. Did he at that time say whether he thought he was dying?—Oh! he thought he was dying. What did he say in the barrack?—I cannot account for what he said in the barrack.

CHIEF JUSTICE.—Are you sure you heard him say any thing in the barrack?—I remember better what he said on the road.

Mr. *Bennett*.—Did he say any thing when you were bringing him to the barrack?—He told me that he thought he was dying. How did you bring him to the barrack?—I laid him in a car, and placed his head in my lap. How far is the place where he was from the barrack?—About one English mile. How long did you keep him in the barrack?—Until the next evening, when he was taken to Barrington's Hospital in Limerick. You said that in the car, when you

were going with him, he told you he thought he was dying; what else did he tell you?

Mr. *O'Hea* objected to that question.

CHIEF JUSTICE.—I will let Mr. *Bennett* examine to this particular point.

Mr. *Bennett*.—When did he tell you he was dying?—He told me so before he got into the car at all. “I am dying,” said he. Then I asked him what was the matter with him, and he told me he was shot.

CHIEF JUSTICE.—I wish, Mr. *Bennett*, you would examine particularly as to what occurred between them when they were in the car.

Mr. *Bennett*, to the witness.—When in the car, and you were supporting him, did he then say any thing as to whether he was dying or not?—He did; he told me he was dying, and to take him as easy as I could. Did he say any thing more?—He told me who shot him.

Mr. *O'Hea*, to the witness.—“I am dying,” said he, “take me as easy as you can. Was he not then complaining of pain and suffering?—Yes. Did he not mean that he was not to be jolted?—Yes. Was that said with a notion of making a dying declaration?—I think it was. Did you ever hear a dying declaration made?—No. What put it into your head that it was a dying declaration?—I cannot say. I only asked him who shot him; of course, it was my duty. Was it in answer to a question you put to him that he told you that?—It was.

CHIEF JUSTICE.—Did you put the question before you heard him say he was dying?—That was the first word he said. Did he begin by saying “he thought he was dying?”—Yes he did.

CHIEF JUSTICE, to Mr. *O'Hea*.—We think at present they are entitled to ask these dying declarations.

Mr. *O'Hea*.—In Roscoe's Criminal Law, page 32, it is stated:—

“When the proof of the deceased's knowledge of his situation was that he said he should never recover, Baron Hullock rejected the

declaration made seven days before the death of the party, observing the principle on which declarations *in articulo mortis* are admitted in evidence is, that they are made under an impression of almost immediate dissolution. A man may receive an injury from which he may think that ultimately he shall never recover, but that would not be sufficient to dispense with an oath."

CHIEF JUSTICE.—I quite concur in that. I think that the interval that has elapsed may make a person very cautious in giving weight to such evidence; but that does not apply here.

Mr. *O'Hea*.—Cleary did not mean by these words to intimate he was actually dying.

CHIEF JUSTICE.—We cannot refuse to give these words their natural meaning. The sense in which the person used them depends much on the condition in which he was at the time.

Mr. *Bennett*, to the witness.—After he said he was dying, what did he say next?—I asked him who fired at him, and he told me "Michael Butler of Broadford." "What Michael Butler?" said I. "Michael Butler of Broadford," said he. These were the words he used. I asked him was there any one with him, and he told me Hourigan who worked in some quarries, he thinks. Did he say "he thinks?" He told me it was Hourigan, but he could not recollect his christian-name. Immediately after coming up, I spoke to him and put this question to him. He first said he was dying. I went on my knees, the way no person could hear what he said. Tell what he said when in the car relating to a third man.—He said he did not know who he was, but he would know him if he saw him. I knew Michael Butler the prisoner before; he lived outside Broadford, near Mr. Butler's gate. Did you ever see the other prisoner?—I do not recollect to have seen him. Mulqueeney went and told the men, and they came up to our assistance. We met a car coming from the direction we were coming in, and I told them they should take Cleary in it.

CHIEF BARON.—Before you found the body, did you meet any person?—No, I did not.

Cross-examined by Mr. *O'Hea*.

Armstrong was before me, and Leech behind me. I did not see

Mulqueeny until I came up to Cleary. He was not the man who told you that a man was shot?—No. You got no information until you saw him?—I think I heard Armstrong say a man was shot. Is Leech here?—No. Why so?—I cannot say. He is your superior?—He is. You said when you saw Mulqueeny you saw a couple of men with him; were they police?—No, they were two civilians, and Armstrong and Leech were there also.

To a *Juror*.—Where were you coming from?—From Clonlara. Had you Armstrong in view all the time?—I had. Did you hear him speak to any person?—I did not, he might have done so unknown to me. Mulqueeny came up immediately after we came up. I think Mulqueeny came in the same direction we were coming. Did you pass him by?—I cannot say. At the time Armstrong called out a man was shot, how far was that from where the man lay?—'Twas about one hundred and fifty yards.

THIRD WITNESS.

Constable *Martin Gallagher* sworn.—Examined by Mr. *Plunket*.

I was stationed in Broadford the night Cleary was killed. Mulqueeny brought an account of it to the barrack. I returned with him to the place. I met a car with a man in it, and I returned with it to the barrack. The magistrate, the priest, and the doctor came in about an hour after. By whose desire was the priest sent for?—I sent for him. I arrested Michael Butler, Matthew Hourigan, and Peter Hourigan that night. Did the deceased man make an information that night before you went to arrest them?—He did. Were you present?—I was. Where did he make it?—In the police barrack. —[The information was produced, and witness identified his signature.]—Did you read it to the deceased?—It was read for him by Mr. Bentley; after the informations were taken I went immediately and arrested the prisoners. I arrested them about eleven o'clock. I arrested Butler in his house in Violet Hill, and I arrested Matthew Hourigan in Broadford, at the house of Daniel M'Namara. He was a labourer of M'Namara's. I did not know Hourigan before. Did you know whether Hourigan had been engaged in quarrying?—I did not. Were you present the next morning when the prisoners were brought before the magistrates?—I was. Was the deceased present?—He was. The magistrates were Mr. Going and Mr. Bentley. Did you see the deceased man identify both the prisoners?—I did.

Mr. O'Hea.—You found one of the prisoners in his own house, and the other in the house of the man with whom he was living?—Yes.

FOURTH WITNESS.

Wyndham Q. Going sworn.—Examined by the *Attorney-General*.

I am a magistrate.—[Witness proved his signature to the information.]—I recollect the night Cleary was shot. I saw him that night about seven o'clock in the police barrack of Broadford. On that occasion he made an information; it was read to him before he signed it, by Mr. Bentley. I saw him the next morning, in the presence of the prisoners, in the police barrack.

CHIEF JUSTICE.—Was he in bed at the time?—No, he was lying on a pallet.

To the *Attorney-General*.—The information was read in the presence of the prisoners by Mr. Bentley. I asked the prisoners if they would ask any question? They said they had no questions to ask him, and declined. Did he re-acknowledge the information upon that occasion?—He did. Did he recognise the prisoners?—Yes, as the persons who attacked him. Did he say any thing as to the state of his health?—He told me he thought he would not recover. When did he tell you that?—He told me in the evening in the barrack, and on the following day. Did he say so before you took his information the night before?—He did. Did he the next day before you read the information to him?—He did.

Cross-examined by Mr. O'Hea.

Can you now undertake to say that he said he would not recover?—He said that he was afraid that he would die of the wound he had received. Was he then in fear of immediate dissolution?—I think he had a fear of immediate dissolution. I asked him if he thought he was dying, he said he thought he would. Repeat what he said?—As well as I can remember, he said he thought he would die of the wound. Did you understand by that he would not ultimately recover?—That was what I understood by it. Was it the same expression he used the following morning?—I do not say it was the same expression. Was it the same impression he left on your mind?—It was exactly.

FIFTH WITNESS.

William Bentley sworn.—Examined by the *Solicitor-General*.

I am a magistrate of the county of Clare. I remember seeing

Patrick Cleary the night he was shot. I saw him on the evening of the 6th of November about seven o'clock at the police barrack. I met Mr. Going there on that occasion. Did Cleary say any thing in your presence with respect to his state in consequence of the wound he had received, as to his expectation of dying or recovering?—I have no distinct recollection that he said any thing. He complained that he was very bad. I saw him the next morning.—[Witness here identified the information made by Cleary.]—Cleary was lying on a pallet in the room. I saw the surgeon the evening before extract the ball. At the time of your taking the information next morning, were the prisoners brought up before Cleary?—They were. Have you any recollection of any thing being said by him as to his dying or otherwise?—I have no recollection of it. When the information was taken, the prisoners were asked if they had any thing to say, and declined. You read his information to him?—I did.

CHIEF JUSTICE.—Did you take down his original depositions?—I did. Did you take them from the lips of the deceased?—I did.

To the *Solicitor-General*.—The clergyman was there the night before. Did he administer the rights of his church to the deceased?—I cannot say. I was in the room adjoining at the time.

To Mr. *O'Hea*.—I cannot say whether the clergyman was with him alone or not. The clergyman is living.

The *Solicitor-General*.—We now offer the information as evidence of a statement made in the presence of the prisoners by the deceased, independent of its being a dying declaration.

CHIEF JUSTICE.—If you intend going further with this evidence, you had better proceed with it first.

SIXTH WITNESS.

William Roche sworn.—Examined by Mr *Bennett*.

I live in Limerick. I saw Cleary in Barrington's Hospital a couple of days before he died. I met a magistrate who told me he was going to take a dying declaration, and that he was obliged to go to another place, and requested of me to go in his place. What state was Cleary in?—I found him in a state of most deplorable anguish; lock-jaw had commenced.

To the CHIEF BARON.—I am a magistrate of the city of Limerick. I had never known Cleary before. He was lying in Barrington's Hospital which we owe to the humanity of this man (pointing to Sir Matthew Barrington.)

To Mr. *Bennett*.—When I approached him I told him the awful purpose for which I had come. I represented to him that he should make a dying declaration with the same solemnity and the same truth as if he were about answering for what he was about to say to me before the Judgment-seat of his God. Did he say any thing about his own state of mind?—No, except in reference to the pain and anguish he was suffering. Did you take a statement from him?—I did.

CHIEF JUSTICE.—How did you understand his state of mind with reference to his apprehensions of death?—I did not hear him say that he was conscious he was dying, but I told him he was dying. Are you prepared to say that his mind was impressed with the belief that he was dying?—He appeared to assent to the views I had stated, but he did not answer me. I then wrote this document.—[Mr. *Bennett* here produced a paper writing and handed it to witness.]

CHIEF JUSTICE.—After this had been written and read to the deceased man, did you repeat to him your conviction that he was on the point of death?—No; I stated that in an impressive manner before I read it to him.

CHIEF JUSTICE, to the Jury.

Gentlemen, the value of this depends on the opinion you may form, as to whether he made it under the conviction he was dying; because it being made under the impression that he was not to live makes it evidence.

The declaration was then read, which was in the following words:—

“The dying declaration of Patrick Cleary, taken before William Roche, Esq., Justice of the Peace, the 18th November 1847, at Limerick.—I, Patrick Cleary, of Englishtown, in the city of Limerick, when returning from Broadford in the county of Clare, on Saturday evening, the 6th November, about half-past five o'clock, was fired at by a person named Michael Butler, and seriously, if not mortally, wounded in the chest and shoulder, in consequence of which wound

I am now languishing at Barrington's Hospital in said city. I also saw a person named Matthew Hourigan in company with said Butler, and seemingly aiding and assisting in said crime. There was also a third person of the party whose name I did not know; and I thus make this dying deposition as my dying declaration, being informed that I have little or no hope of recovery; and I make it therefore with the same truth and solemnity as I shall answer for at the throne of Almighty God."

I took the substance of that from him, and read it twice over. He said when I came in, "If I am to die I forgive them."

Mr. *O'Hea*.—The words there used are your phraseology and not his?—Yes. You derive your idea of his state of mind from his assenting to what you said?—Yes.

CHIEF JUSTICE.—You took the substance of that from his own lips?—Certainly.

Mr. *O'Hea*.—Did he make use of any expression as to his being in a dying condition?—No; he did not.

Mr. *Bennett*.—How soon did he die?—He died two days after.

SEVENTH WITNESS.

Doctor *Robert Ringrose Gelston* sworn.—Examined by the *Attorney-General*.

I am surgeon to Barrington's Hospital. I commenced my attendance on Cleary on the 7th of November, and attended him daily until his death on the morning of the 21st. What state was he in all that time?—He was in a very hopeless state from the 16th. I told him the nature of his disease was such that in all probability he would die. From the time he came into the hospital he gave himself up. I reasoned with him at first, but he gave himself up. From the 16th he became worse; he had tetanus. You had no hopes then?—Yes; but certainly not on the 17th. Did you tell him then?—I told him and his wife that there was no hope for him.

Mr. *O'Hea*.—When did you tell him that?—I told him the evening of the 17th he would certainly die. You said in all probability?—I did.

To the *Attorney-General*.—A gun-shot wound caused his death; the ball went in under the arm, close to one of the principal arteries; the person who fired must have been very close to him; the skin was so much blackened it was almost impossible to discover where the ball had entered.

EIGHTH WITNESS.

John Malone sworn.—Examined by Mr. *Plunket*.

I am a physician. I saw the deceased Pat Cleary the night he was wounded. I extracted the ball; the wound was in the left side of the chest. I afterwards saw his body at the inquest..

NINTH WITNESS.

Jane Cleary sworn.—Examined by the *Solicitor-General*.

I am widow of Patrick Cleary. I and my husband were here at the Spring Assizes twelve months since. My husband was examined as a witness then. Do you remember the last Assizes?—I do. Was he examined then?—The case did not come on; it was an adjourned case. I saw my husband in Barrington's Hospital after he was shot. The first day I saw him was on the Monday after he was shot. He died the Sunday week following. I was constantly with him from the Thursday before his death. Did he say any thing about his dying?—He did. Did he leave any children?—Three. Did he say any thing about his children?—He gave directions about them.

Mr. *O'Hea*.—I submit this is no evidence.

CHIEF JUSTICE.—Just at present it is not evidence, but it may be made so.

Solicitor-General.—What did he say to you?—I went to him about a quarter of an hour before his death; he took my hand in his, and asked me where the children were; I said they were with their uncle O'Brien. "Oh! Jenny," said he, "O'Brien will take Mike, and you and the two little ones must go to the Poor-house, and may God help you." "Oh! Paddy," said I, "God will keep me, but you will keep me too; I will have you longer." "Oh! no," said he, "I cannot help you, for I am dying." "Oh!" said I, "You say that to frighten me, because it is dark." "Oh! no," says he, "I do not mean to frighten you, but I am really dying." I then called the nurse to bring a candle, and said, "Oh! Paddy, if you are dying, if you have any doubt about the men who killed you, don't criminate Butler and

Hourigan." "I have no doubt," said he, "it was Butler who fired the shot, and Mat Hourigan was with him; but I forgive them." The nurse then brought the candle, and he expired in about five minutes after. I did not know either of those persons before.

The *Attorney-General*.—We now offer the information of Cleary as evidence. It appears it was taken on oath the night the offence was committed—of course not in the presence of the prisoners; if the matter rested there I could not offer it; but on the following morning it was read before the prisoners, and the deceased identified it, and re-acknowledged it, but it was not re-sworn; it is, however, evidence as a declaration made in the presence of the prisoners.

CHIEF JUSTICE.—First, is the information within the statute? it was only read over in his hearing.

The *Attorney-General*.—I do not press it as an information.

CHIEF JUSTICE.—Then as a declaration assented to, I do not think it evidence.

The case for the Crown here closed.

Mr. *O'Hea* addressed the Jury on behalf of the prisoners.

Gentlemen of the Jury, this is a case on which the lives of two men are at stake. I have no doubt, therefore, that every attention will be given to any thing that may be urged on their behalf. The case affords much to be said; first, as to the nature of the evidence which has been given; secondly, as to the absence of all other evidence, except the testimony of the dying man; save the additional circumstance of the first witness having seen one of the prisoners at the bar within half a mile of the place where the murder was committed, no other proof whatever has been given.

Gentlemen of the Jury, this is evidence which a Jury are entitled to act upon, but it is subject to very great diminution as to its value, for it stands no higher than the evidence of a man on his oath—that is its value, and no more. If, then, it has no more value than evidence given by a man produced to detail the facts of a case, its value is considerably diminished by reason of there being no power of cross-examination. Cross-examination is not alone valuable as

testing the truth of the witness, but also his accuracy as to the impressions formed in his mind, how they have been arrived at. If the witness had been on the table here, I could have asked him had he known either of the prisoners before? and how long before? how near were they to him? what power of observation had he? All these are matters to go to the essence of this very class of evidence. Of this advantage I am deprived. No doubt I believe that the man spoke what he believed to be the truth. But how can I ascertain what means he had of knowing Butler or the other prisoner? You see the difficulties this class of evidence places me in, and the utter impossibility of the prisoners being able to defend themselves. If in the weakness of his dying moments the deceased man had made some mistake; if he had mentioned the wrong man; if he had named the witness Mulqueeny, what power on earth could have saved him? Suppose that the deceased man had seen Butler on the road, and that another person had shortly after shot him, he having in his mind a recollection of having seen Butler, and in the state of weakness and suffering he was in, he mentioned his name, how could the unfortunate man defend his life? These are difficulties in the very essence of this species of evidence, and inseparable from it. If once he had made a statement, he would not change from it, and you see the total impossibility of ascertaining whether he had made a mistake or not. No doubt he spoke what he believed to be the truth; but the most conscientious of men have sometimes fallen into a mistake. I will cite for you what a most experienced and eminent Judge says in reference to evidence of this description:—Judge Coleridge says, “It is necessary to be cautious in receiving impressions from accounts given by persons in a dying state, especially when it is considered that they cannot be subjected to the power of cross-examination, a power quite as necessary for securing the truth as the religious obligation of an oath can be. The security also which Courts of Justice have in ordinary cases for enforcing truth, by the terms of punishment, and the penalties of perjury, cannot exist in this case. The remark before made on verbal statements, which have been heard and repeated by witnesses, applies equally to dying declarations—namely, that they are liable to be misunderstood and misreported, from inattention, from misunderstanding, or from infirmity of memory.” How can you then rely on this evidence? that being exclusively, and the only evidence that affects one of the prisoners, and supported as to the other prisoner by the slightest possible circumstances.

Again, Gentlemen of the Jury, is there not a total absence of any

thing like a motive to influence these prisoners, or either of them? The *Attorney-General*, in stating the case for the Crown, thought it necessary to suggest a motive. I not mean to make any complaint of his having done so ; for all through the course of this Commission, the proceedings have been conducted by my learned friend with the greatest fairness. He, however, thought it necessary to suggest, not to state, as a motive, that the deceased man had been a public prosecutor. But no evidence whatever was offered of that fact ; nor was there any evidence to show that he or his wife had prosecuted any person in the slightest degree connected with the prisoners at the bar. If he had proved that any person belonging to them, or either of them, had been prosecuted, that would have been a strong circumstance against them ; but no such evidence was given. What then have you ? Nothing, save the dying declarations of the deceased man ; the absence of all means of examining or testing his accuracy or truth, and no assignable motive for the perpetration of this deed.

* Again, the prisoners were both found, immediately after the outrage was committed, in their own proper habitations. That is a strong fact in their favour. If they had absconded, that might have been fairly pressed as a circumstance against them ; and am I not entitled to claim this in their favour, the fact of their being found in their own proper homes ? But, gentlemen, it may be urged, that when produced before the deceased man, and identified by him, and asked if they had any questions to ask him, they declined. I think that was a most prudent course, and cannot be urged as evidence against them. Generally, questions put on such occasions seldom add to the safety of the accused, and observations made are often liable to be misunderstood. If the question had been asked of the man in a superior rank of life to the prisoners, and he had made a similar reply, no doubt such would tell strongly against him : but as to men in their class of life, such evidence ought not to have any weight with you.

Gentlemen, in conclusion, I will implore of you to consider the nature of this evidence ; the utter absence of motive, and the absence of all antecedent or cotemporaneous circumstances. I ask you, on behalf of these men, to weigh maturely the case, and give them the benefit of any doubt that may arise ; and in the verdict which you may give, to temper justice with mercy.

The *Solicitor-General* replied on behalf of the Crown.

Gentlemen of the Jury, I think it my duty, in this case, to make a

few observations to you, inasmuch as the evidence principally rests on several dying declarations made by the deceased man. The murder was committed on the 6th of November, between the hours of five and six in the evening ; and almost immediately after an alarm was given, and a charge made against the prisoners at the bar by the deceased man, when they were immediately arrested by the police. They therefore received immediate intimation of the crime with which they were charged, and they had full opportunity to bring forward evidence, if any existed, to rebut that charge.

It is but right, gentlemen, to say that, in criminal prosecutions, the prisoner has a right to say, "I rest upon the weakness of the case for the prosecution ; and I am therefore not called upon to go into any evidence." The question you will have, therefore, to consider is, whether a satisfactory case has been made to entitle the Crown to a conviction. There can be no doubt now, that a dying declaration is accompanied with all the sanctity of an oath, and entitled to the same weight as if the party were alive now, and deposing to the individual who had wounded him. But it must be always open to investigation, and a jury should consider the means of observation the party had, and be satisfied that he was impressed with the awful situation in which he was placed, influencing him to state the truth. We have then, as if upon oath, this man identifying the prisoners as the persons who had injured him. What circumstances are there that would lead you to think that he had designedly stated a falsehood ? If you have no reason to doubt his truth, the next question you will have to consider is, whether he had been liable to make a mistake. If so, the prisoners are entitled to an acquittal. What are the circumstances of this case ? The prisoner Butler appears to have been convenient to the village of Broadford ; and it is plain that if Butler is the man who shot him, he must have dogged him from the village, for he appears to have been overtaken by Mulqueeney, who passed him on the road. Mulqueeney plainly identifies Butler. He knew him, passed him by, and shortly overtook Cleary. He passed him by also. All were moving on together in the same direction ; and the natural inference is, that Butler was following his victim, and meditating an opportunity for his assassination.

It is said that Cleary may have been mistaken. What reason have you to draw such a deduction ? Is there not evidence that these persons were determined that death should follow, for the person who fired the shot came so close that the muzzle of the weapon must have touched his body or been in immediate contact with him. If Mul-

queeney could identify him, why could not Cleary also? How could he have named him unless he had known him before? therefore, as to the effect of the dying declaration it appears to me conclusive. That declaration was made immediately; the men were searched for and arrested by the police, and charged by the deceased man with the offence; and when called upon declined to ask any questions.

Gentlemen, you will give what weight you think proper to the observations made by my learned friend Mr. *O'Hea* in reference to this matter. I should be sorry that men in their rank of life should be judged of by their silence or by their language, that language not being always perhaps the most technical or proper. However, the murder was committed. The deceased man charged the prisoners in their presence: they do not deny it; they are silent, and do not refer to any circumstance to show the impossibility that they could be the persons. Then again you have the dying declaration of the deceased man, made before Mr. Roche; and it will be for you to say whether he gave that evidence under a delusion or mistake. You have therefore corroboration as to Butler, he being seen near the place where the murder was committed, and going in the same direction with the deceased man.

The case of the prisoner Hourigan is so far distinguishable from the case of Butler, as it rests solely on the dying declarations of Cleary. It is so far open to observation; there might by possibility have been a mistake as to one, although there could not as to the other; because you have it beyond all doubt that there were two persons present, and Mulqueeney tells you he saw the shadow of two persons; and the question you have to decide is, was Hourigan one of those two? It is for you to say, giving to this dying declaration what value you may think it entitled to, whether you think he could have been mistaken. And on the whole, you will decide whether the evidence is of that defective nature which has been relied on.

The CHIEF JUSTICE.

Gentlemen of the Jury, in this case the prisoners Michael Butler and Mathew Hourigan are indicted for the wilful murder of Patrick Cleary, on the 6th of November 1847. So far as regards the perpetration of the murder, there can be no doubt that Cleary was murdered between five and six o'clock in the evening, and that that murder was perpetrated by fire-arms; and the person discharging it must have been almost in contact with the deceased man; for the evidence of the surgeon is, that the powder had so blackened all parts adjacent to the

wound, the orifice was scarcely discernible; the muzzle therefore of the gun, or weapon, whatever it was, must have been touching, or very close to his person when the wound was inflicted, and of that wound he died in Barrington's Hospital. As to the cause of his death therefore no doubt or difficulty can arise.

Gentlemen, the evidence in this case in support of the prosecution is not evidence given upon oath. When I say not upon oath, I mean the material part of the evidence, that which, if believed, brings home guilt to the prisoners—that is, unsworn testimony; and not merely that, but it was the evidence of a witness whom, by the act of God, the Crown were unable to bring forward. The principle upon which such evidence is receivable is this: if the declaration be made by a party in extremity, when he is on the point of death, and every motive to state what is false is gone, and induced by the awful situation in which he is placed to speak the truth, such declarations are considered by the law as equivalent to an oath in a Court of Justice. This evidence was therefore necessarily admitted by us; it was impossible that we could reject it, because the law made it admissible, an equivalent to an oath, and it is not to be rejected because the prisoners had not the privilege of having the witness sworn and cross-examined; and the law directs that dying declarations are to be treated by a jury as if given under the solemn sanction of an oath. These, therefore, being legal evidence, it will be for you to say how far they have received corroboration, either directly or circumstantially. A dying declaration may receive great confirmation; for instance, if the party gives the same account on different occasions, as, by pointing out and positively identifying the person charged with the murder, I consider such confirmation of great weight; but I do not mean to guide you in your judgments. I merely have to call your attention to the evidence which has been properly admitted for the purpose of being subjected to your better judgment, and it will be for you to say what weight you consider that evidence entitled to.

With respect to one of the prisoners, there is a circumstance of confirmation which I shall call your attention to in the first instance, because in tracing out the course of events it appears to be one of the earliest:—Mulqueeney, whose evidence has been unimpeached, and who cannot be impeached as a participator in the offence, tells you that he met the prisoner Butler within half a mile of the place where the murder was committed, shortly before the shot was fired, and going in that direction. If his evidence be true, Butler might have been contiguous to the deceased man when the shot was fired. I merely say

that it was possible from the position which he occupied. The conduct of Mulqueeny was not that of a guilty man, for he goes with the police to the place where the murder was committed, and so little suspicion had the police of him that they actually sent him for further assistance. There is no reason, therefore to cast the slightest imputation on the propriety and fairness of his evidence. If, then, you believe this witness, Butler was contiguous to the spot, and that contiguity is a circumstance corroborating what was proved by other evidence, charging him with the commission of the murder. But, gentlemen of the jury, that circumstance applies exclusively to Butler, and not to Hourigan. The difference between the evidence as affecting both the prisoners is this : that as to one of them, Butler, you have the dying declarations corroborated by the testimony of Mulqueeny ; and as to the other, there is no corroboration, if corroboration be required, of his guilt. In addition to this, you have the evidence of Fleming ; he tells you that, preliminary to making any statement in reference to the prisoners, Cleary said he was dying. He then told him that Butler and Hourigan were the men who shot him, and he gave their description. As I collect from that witness, that statement was repeated on the car on which Fleming travelled with the deceased. The next transaction occurred that evening : that was the examination of the deceased man by the magistrate, who took down in writing the account the deceased gave of the transaction, and swore him as to the truth of it. The next morning the prisoners, having been both arrested, were brought to the police-barrack, where the deceased man was lying on a pallet, and in the hearing of both the prisoners the information of the deceased man was read to them, and the prisoners were asked if they had any question to ask, and they said that they had not.

Gentlemen, it is right that I should guard you against giving the slightest weight or effect to any thing you may have heard in reference to this information ; you must not conjecture any thing as to its contents. We are not at liberty to consider what the contents are ; for the only part of this transaction which I consider legal evidence is this, that the two prisoners at the bar were produced to the deceased, recognised and identified by him as persons he had known : to that extent the evidence of Fleming was properly received ; what value is to be given to it you are to consider. The next transaction is, the surgeon endeavouring to encourage hopes which he himself did not entertain, and to induce him to think he was not in the desperate state he was : but on the 17th his condition appears to be almost hopeless, and on the 18th Mr. Roche the magistrate visits him in the

hospital. Now, although that declaration made to Mr. Roche was received, and I think properly received, in evidence, I am bound to say that if the case stood upon that alone I should have some doubts as to whether it was not liable to a great many of the observations you have heard. There may be a question as to whether the dead man did so express himself as to show he was under the impression of impending dissolution. All that occurred would appear to justify the conclusion that he was, for the surgeon withdrew all hope from him: but you are to decide, and decide that exclusively. In addition to that dying declaration of that precise character, you have him giving directions with respect to his family with that solemnity showing that he was on the verge of eternity, and that solemn declaration must show he went out of the world with that impression on his mind. Now, a single declaration made under such circumstances might be comparatively weak, but he appears to have had one uniform impression on his mind. If, however, notwithstanding all you have heard, you have any reasonable doubt, you will give the prisoners the benefit of it.

The jury retired at two o'clock, and in half an hour returned a verdict of Guilty.

The prisoners were then remanded.

Same day.

TRIAL OF WILLIAM LIDDY,

FOR ROBBERY OF A GUN.

The long long panel having been called over, and the prisoner having challenged four jurors peremptorily, the following jury were sworn :—

John Blood.	Richard Davis.
John Scott.	Pierce Creagh.
Henry Bolton.	Francis Hoegrave.
Francis Roslewin.	George Lysaght.
Henry Fairtelough.	Charles Walnut.
Edward Morony.	John O'Kelly.

William Liddy was then given in charge, on an indictment for having, on the 6th of June 1847, at Kilnacrandy, in the county of Clare, feloniously stolen a gun, the property of John Shea.

The *Attorney-General* briefly stated the case for the prosecution.

Gentlemen of the Jury, the prisoner at the bar is indicted for stealing a gun, the property of John Shea. It is necessary that I should call your attention to the circumstances under which this charge is brought forward. A man named Burke was herd to a Mr. Molony, and had been left by him in charge of his house. Mr. Molony had left the house in care of Burke, who had got the blunderbuss for the purpose of protecting the property of Mr. Molony. He got the gun on a Sunday, cleaned it, and loaded it with four bullets, and left it in an apartment in the house. A window of the house was broken open, and by that means the gun was carried off. No person was present when the outrage was committed, but on the same night the police found the gun with the prisoner Liddy. The police had gone to arrest a man named M'Mahon, who was charged with an offence, and they found the prisoner armed with this gun, charged in the manner I have stated, keeping guard over M'Mahon; and you will only have to consider whether he was the person who stole it, as it will be proved to you he was working in the neighbourhood at the time the gun was stolen.

FIRST WITNESS.

John Shea sworn.—Examined by the *Solicitor-General*.

I bought a blunderbuss in June last from Patrick Lyons. I know Mr. Croasdale Molony. I know Thomas Burke. Burke lived in Mr. Molony's lodge. I remember giving him a gun on a Sunday morning some time in June. I left it with him to clean and load, for I was in charge of Mr. Molony's stock. I had the gun in my possession but one night. I cannot identify it, but the blunderbuss I bought from Lyons I gave to Burke. I had got it on the previous Tuesday. It used to pass from one man to another.

Cross-examined by Mr. *O'Hea*.

You used to lend it at night, and get it back in the morning; how can you say it was the same blunderbuss you were given in the morning?—It was like the one I had.

SECOND WITNESS.

Thomas Burke sworn.—Examined by *Mr. Bennett*.

I lived in Mr. Molony's lodge in June last. I got the blunderbuss from Shea on Sunday morning, the 6th of June. He came in to me that morning, and desired me to clean and load it. I did not clean it, but in the course of the day I loaded it, and brought it up to Mr. Molony's house. Mr. Molony's house is in the county of Clare. The house was empty. I unlocked the hall-door, and placed the gun in a little room off the kitchen, and left the house. I came back in the evening to the house, and I went into the room for the blunderbuss, and could not find it. I observed a portion of the window had been removed. I was brought to the police barrack, and I saw a blunderbuss very like it there.—[Witness was handed a blunderbuss.]—Is that the blunderbuss you got from Shea?—It is the colour of it, but I am in doubt whether it is it or not. Had you always a doubt?—I always had. Were you sworn in July last?—I was, before Mr. Patterson. When I saw it in Newmarket, I think there were no balls in it; they were lying on the table. Is that the gun?—I do not know whether that is the gun or not. Was it wadded?—It was. With what?—I cannot say.—[Witness was handed a small piece of paper.]—Did you ever see that paper before?—It is like paper that was produced to me in Newmarket. Did you ever take the covers off Mr. Molony's newspapers?—I used to do so. Is that one of the covers?—I do not know. It is like one. Did you put the blunderbuss you got from Shea in Mr. Molony's house?—I did.

Mr. *Bennett* read the information made by the witness on the 11th of July 1847, as follows :—

“Saith, that on Sunday morning the 6th of June last, he informant got a blunderbuss from John Shea, who was going to prayers, who told informant to load and clean it. Informant further saith that he left said blunderbuss by until the middle of the day, when informant loaded it, and put it under his arm, and walked up to Mr. Molony’s house, and opened the hall-door, and went in and left said blunderbuss on a dressing table near a window to Mr. Molony’s house, there being no person in the house at the time. Informant locked the door and put the key in his pocket. Informant also saith that he came back to Mr. Molony’s house about nightfall, unlocked the door and went in, and found the blunderbuss was gone, and the window broken. Informant also saith, that he never saw the blunderbuss since then. The blunderbuss now produced to him at the police-barrack at Newmarket-on-Fergus, he has no doubt in his mind is the one stolen from Mr. Molony’s house at Kilnacrandy, on Sunday the 6th of June last. Informant loaded said blunderbuss with gunpowder and four bullets. Informant further saith, that he was also in the habit of having envelopes or covers of newspapers directed to Croasdaile Molony Esquire, Kilnacrandy, Newmarket-on-Fergus, in his possession. Informant knows a man named William Liddy to be working in a field quite near Mr. Molony’s house, some days during the week the blunderbuss was taken.”

Did you say you had no doubt that was the gun?—No, but that I had and have a doubt. I made that remark at the time I made my information. Had you a doubt on your mind, at the time it was produced to you, that it was the gun?—I had. Did you say you had?—I did certainly. To whom?—To Wyndham Patterson. Were you in the habit of taking the covers off the newspapers?—I was.—[Witness was handed a paper.]—Did you ever see that before?—I do not know whether I did or not. What did you wad the gun with?—With paper. Where did you get the paper?—In my pocket. Do you know the prisoner?—I do. Did you know him before you got the blunderbuss?—I did. He was a labouring man. I saw him some days previously working in a field adjoining my place, but I cannot say what day that was.

Mr. *O’Hea*.—Had the prisoner turf from Shea?—I understand he had.

THIRD WITNESS.

Patrick Lyons sworn.—Examined by the *Attorney-General*.

[Witness was handed the blunderbuss.]—Do you know that gun?—I do; it was the property of my sister; I sold it to John Shea on the 1st of June for £1. I have no doubt that was the gun; it was in my sister's house for three years.

Cross-examined by Mr. *O'Hea*.

How do you know it?—There are marks on it. There is a letter T on the stock.

Mr. *O'Hea* here read the information made by witness on the 11th of July 1847, as follows:—

“Saith that on the 1st day of June 1847 he informant sold a blunderbuss to John Shea of Kilnacrandy, which blunderbuss is now produced in the police-barrack at Newmarket-on-Fergus, and which he identifies as being the blunderbuss he sold to John Shea; said blunderbuss was marked with the letters C. L. 287, and informant has the registry ticket in his possession.”

The letters C. L. 287 are the registry marks. Was it by those marks or the letter T you knew it?—I knew it by each and every one of them. Did you ever use it?—No; I never fired a shot out of it.

John Shea was here re-called.

Attorney-General.—Did you buy a gun from Patrick Lyons?—I did. Was that the gun you gave Burke?—It was.

To the CHIEF BARON.—I used to give the gun to the men from Mr. Molony's house. I used to give it to them in the evening, and they would bring it back in the morning. I had the gun but one night in my possession. Did you give it out of your possession more than once?—I did; it used to be between two men named Murphy and Blake; they used to relieve each other. I bought it on Tuesday. I had it myself that night; every night after I gave it to the men.

FOURTH WITNESS.

John Donovan sworn.—Examined by the *Solicitor-General*.

I am a sub-inspector of police.—[Witness identified the gun.]—I saw this gun on the night of the 6th of June at Kilnacrandy in this county. I found it in the hands of the prisoner. I was going to arrest a man named M'Mahon, who was charged with a whiteboy

offence. I had other police with me. It was about midnight. I was going to the house where I was told M'Mahon was. When I got the gun with the prisoner I examined it, and found it loaded with powder and four balls. It was on full cock, and the prisoner presented it at me. I arrested him. This was about a quarter of a mile or less from Mr. Molony's house.—[Witness was handed the paper before produced.]—This is the paper with which the gun was wadded. Mr. Molony's name is on that paper. I was shown by Burke the place where the gun was taken from.

The case for the prosecution here closed.

Mr. O'Hea.—My defence here is, that the prisoner got the blunderbuss from Burke's wife to protect his turf.

Betty Shea sworn.—Examined by Mr. O'Hea.

I am the wife of John Shea. I remember my husband having a gun in the month of June last. I would not know the difference between a gun and blunderbuss.—[Witness was shown the blunderbuss.]—It was like that. I got it in Mr. Molony's house on a Sunday evening. I know Mrs. Burke. I know the prisoner. He came to me that evening and asked me for it, and I gave it to him. I got it in Mr. Molony's house standing on a dressing-table near a broken window. Mrs. Burke was there at the time. I went round to the window. I shifted the laths of the window, and worked myself in, and handed the gun to Liddy.

Cross-examined by the *Attorney-General*.

I gave it to him between six and seven o'clock in the evening. I was milking the sheep, and he came to me and asked me for it. The sheep were in Mr. Molony's yard. Mrs. Burke was with me. My husband was gone to mass. My husband had not come home. He came home about seven or eight o'clock. He got his dinner from me. He got no dinner before that. The chapel is two miles and a half from my house. I did not go to mass that day. I broke open the window. Liddy gave me no help. Mrs. Burke is the housekeeper. She told me it was there. The window was an old broken window. I am no relation of Liddy's. I never told this story to my husband, because the gun was not brought back in the evening. I was afraid to tell him. There were nineteen sheep there. The gun was standing beside the dressing-table at one end of the window.

To Mr. *O'Hea*.—My husband did not come in from the time he went to mass.

CHIEF JUSTICE.—Who was in charge of the house?—Mrs. Burke was; but my husband kept the key. Why did you give the prisoner the gun?—He asked me for it; he said he wanted it, that they were stealing his turf.

Kitty Burke sworn.—Examined by Mr. *O'Hea*.

[Witness was shown the blunderbuss.]—I remember seeing something like that before. I am the wife of Thomas Burke. He was Mr. Molony's lodge-keeper in June last. I was milking the sheep when Liddy came into the yard and asked me for the blunderbuss. Mrs. Shea asked me for it and for the key, and I told her my husband had the key; but if she wished to give him the gun, she might get it out through the window. She went round to the window and got it out. She shifted two of the laths, took out the gun, and handed it to Liddy.

Cross-examined by the *Solicitor-General*.

When she was going in I held her until she shifted herself in. It was I told her where the gun was. I knew it was there, for I was in the care of the house. I knew it was in that room it was always kept. Were you at home when your husband charged the gun?—I was. Did your husband go to mass?—No; he did not. Did you see him charge the gun?—I was in the house when he charged it. I took no notice of him doing it. Could he have loaded the gun without your seeing him?—He might have done it in the room, and I might be in the kitchen. How did you know the gun was in the house?—I knew it was in the house he kept it. Was it John Shea's gun?—It was. Did he only get it that morning from Shea?—That was it. How did you know it was in the room beside the dressing-table?—I knew it was in the house he kept it. How did you know it was in the house? I knew it was down there he took it when he loaded it. Did you ever tell your husband you had given out this gun?—I never did. I do not recollect what time my husband came in that day. I have children. He went up to the house at night. Used you to stop in the house with him? Not at that time. Did you not hear that evening that he missed the gun?—No; I heard it the day following. This happened in June. I never told any person of it.

To Mr. *O'Hea*.—I knew the gun to be there, because when my husband had the gun, it was there he left it. It was a bed-room it was in. The prisoner is no relation of mine.

To the CHIEF BARON.—I was standing near her when the window was raised. I was not afraid of my husband at the time, because I thought he would have returned it before my husband would miss it. He said he would bring it back.

The evidence for the defence then closed.

The *Solicitor-General*.—My Lords, I submit, even supposing the evidence given for the prisoner be all true, which I think all a fabrication, still the character of the offence is not altered. It is not open to a man's wife to confederate with others to take away his property; and in the breaking the window a burglary was committed. No doubt if he got it with no intention of stealing it, it would be no larceny, but the circumstances under which it was got in his possession show quite a contrary intention.

CHARGE.

The CHIEF BARON.

Gentlemen of the Jury, the evidence given on behalf of the prisoner, to a certain extent, removes what might be one ground of defence, because there is now no doubt that the gun which had been in the house is the identical gun which was found with the prisoner. You will say whether you can entertain any reasonable doubt that the gun which Lyons proves was not the gun sold to Shea, although Shea does not identify it. The marks proved to have been on the gun are strong evidence of its identity.

Then there is another question, upon which depends the guilt or innocence of the prisoner. First, do you believe the testimony of the witnesses produced on his behalf? for if you do, the case is this—recently after the loss of the property, on the very same night, the property is found in the possession of the prisoner, and used apparently for an illegal purpose. It is found under such circumstances, that if the mode of obtaining it were not accounted for, the fair inference would be, that the prisoner had stolen the property; but that would be only in case you believed this evidence an untrue and pure fabrication. The evidence of these witnesses is for your consideration. I will not detail their evidence; you have heard them examined, and it will be for you to say whether or not you believe their story.

But if you believe this story, then another question will arise. If you believe that the prisoner got this gun with a bonâ fide intention to return it, and on the part of those women to lend it to him, I would not consider that act would amount to larceny ; but if Liddy induced one of them to take the gun, representing that he wanted it for one purpose, and intending to appropriate it to another use, and to make away with it—if you believe that to be so, then you will convict the prisoner : that he wanted it for a different purpose from what he stated, that is, to mind turf, is proved by the sub-inspector. Whether he did want it for that purpose or not, it is plain he did for another purpose. He may undoubtedly have sought to obtain the gun as a loan, representing that it was for one purpose, whereas he wanted it for another, or he may have wanted it for both purposes, with the intention of returning it ; there must be an *animus furandi*. Upon these two questions I leave the case with you.

The jury, without leaving the box, found the prisoner Guilty.

SENTENCE.

The CHIEF JUSTICE then addressed the prisoner.

William Liddy, we are now well apprised of the character of the offence of which you have been found guilty, and what is the actual state of your case? First, you robbed the house of this blunderbuss ; because, as to the story told by those women, not one word of what they said is true, nor have the jury believed them. What, then, are the circumstances under which you were arrested? The house of a man named Canny is attacked, he defends himself, and wounds one of his assailants, and you, with several others, take charge of the wounded man ; you keep guard over him, and you threatened to shoot the police officer who arrested you. You were convicted for that latter offence, and are now undergoing punishment for it. The sentence of the Court, under those circumstances is, that after the expiration of that sentence, you be imprisoned for twelve months with hard labour.

Same day—four o'clock.

TRIAL OF JAMES HEARSE AND OTHERS,

FOR POSTING A THREATENING NOTICE.

Same Jury.

James Hearse, Michael Duggan, John M'Mahon and Laurence Shanahan were given in charge on an indictment that they, on the 31st of December 1847, at Kilrush in the county of Clare, did knowingly and feloniously post a certain threatening notice.

There was a second count charging the prisoners with administering a false oath.

FIRST WITNESS.

Synon Curtin sworn.—Examined by the *Attorney-General*.

I am a sawyer. I live in Kilrush in the county of Clare. On New-year's Day I went to water my ass in a stream near Colonel Vandeleur's back gate. While I was there I saw some persons going towards the gate. I was quite close to them. I saw five men—[The witness identified the prisoners as being four of those five men.]—One of the five men had a pistol; that man was not one of the prisoners. I knew three of the prisoners by name; but I did not know the name of Hearse at the time. They lived convenient to me last summer; within three or four doors of me. M'Mahon, Shanahan and Duggan lived near me. I did not know where the other prisoner lived. Three of them went up to the gate, and one of them posted a paper on it. I do not know which of them put up the paper. The ass sneezed, and one of them turned back; that was the man who is not here, and the other men came back with him. That man asked me who I was? I said "a friend." He came up to me, presented a pistol at me and told me to stand, and asked me did I see any thing. I said I did not. It was a man named Brookes said that to me. Hearse then raised a stone, and Duggan told him not to strike, "that it was Curtin that was in it." They told me to go home. They came to my house in less than one hour after. The same party came to my house. They all came into the house. My children and Catherine Keane were in the house. They pulled me out of bed, and they put a book into my hand and swore me not to tell any thing;

that if I did they would dash my brains out. They said "if they did not get work or relief, if Colonel Vandeleur or Mr. Kennedy did not give meal equally to every one, they would have his life." My wife, another woman and my children were in the house. I went to the police-barrack the next morning; I met the head-constable; I told him I wanted him, and he came with me. I saw them posting the paper on Mr. Vandeleur's back gate. I did not read the paper.

Cross-examined by Mr. *O'Hea*.

Did you ever hear of Paddy M'Kews?—I did often. None of them made themselves known to me until the jackass sneezed. How do you earn your bread?—I had a horse and car. I was a sawyer. For a month before this I was not well, and was getting relief. This occurred about six o'clock in the evening. Had you a pistol that morning?—No. Had you ever one?—I had one four or five days before. Duggan and Brookes took it away from me. What business had you with a pistol?—It was of no use. What did you want with it?—I had it four or five years. I made no use of it. Were you ever here before?—I was, on a prosecution for doing damage to Mr. Vandeleur's pump. Can you read and write?—I can.—[Witness read the notice.]—Is that notice in your handwriting?—No. How does Catherine Keane get her living?—I did not ask her. Was she on the relief?—No.

SECOND WITNESS.

James M'Mahon sworn.—Examined by the *Solicitor-General*.

I recollect the evening the notice was posted on Mr. Vandeleur's back gate. It was the last day of December. I took it off the gate. The paste was fresh on it. I found it on the gate about half-past six o'clock in the evening. I dried it and brought it to Mr. Vandeleur.

To Mr. *O'Hea*.—Curtin did not tell me it was there. I am in Mr. Vandeleur's employment.

THIRD WITNESS.

Crofton Moore Vandeleur sworn.—Examined by the *Attorney-General*.

The last witness is in my employment.—[Witness was handed the notice.]—I am the person to whom this notice refers. I got the notice from the last witness the evening before New-year's Day, about seven o'clock. I know Captain Kennedy. He was the Inspecting Officer

of the union. I am the Chairman of the Board of Guardians of the union. Did you know Pierce Carrige?—I did; he was murdered.

The notice was then read as follows :—

“Take notice. Crofton Vandalure If you don't change your mind and give relive to the young as well the old And Not to Put a stop to the Publicke Worke as you are and also Captin Kenidy if ye Dont be said by this Notice blive me I; will do withe ye as I did with Pirce Carrige.

“So have yeir will maid in time.”

FOURTH WITNESS.

Margaret Curtin sworn.—Examined by the *Solicitor General*.

I am the wife of Synon Curtin. I remember the last day of the last year. I remember that on that day after nightfall my husband went out with the ass to give it water. The river is near the back gate. It is the place where the ass is usually watered. My husband came back in about a quarter of an hour and stretched himself on the bed. There was bog-deal on the fire. Five men came into the house; one of them had a pistol. Two men came in first, and three stood at the door. Two came up to the bed; one of them had a pistol, and the other had a book. They asked me where was my husband. I told them. I was then preparing my dinner. They pulled my husband out of the bed, and he fell on the floor. He was weak after the sickness. One of them took a book and told him if he did not take the book, he would let what was in the pistol through his body if he spoke of what he saw that night. They made him swear that. Were you able to see those men so as to know them?—I would know them. I knew them all but one man. I only saw one of them before that night. Did you identify them?—I did. I was brought to the barrack and identified them.—[Witness identified the prisoners.]—These four men were there that night. There was another man along with them. They lived about the Glen, not far from me. It was John M'Mahon gave the book to my husband and swore him. The man who had the pistol is not here.

Cross-examined by Mr. *O'Hea*.

My husband can write a little; he often wrote. Did you see him writing a short time before this?—No. Had he any paper in the house?—No, he had not. I never saw him having a pen in the house. When did you see him write? I saw him write a long time

before that. He was very sickly. Was he not able to write?—He was not. Who bid him go out?—The boy was out, and the little girl being a child, the father went out. Was that the usual hour for watering the ass?—It was. How does Catherine Keane support herself?—She had a spot of land. She was only living with me since Christmas Day. She was not with me three months before; but she used to be coming and going to the house before that. What was your husband sworn with?—With a prayer-book. How do you know?—I know it by the cover. Catherine Keane was in the house at the time. There was bad light; there was nothing but bog-deal lighting. I do not know whether Catherine Keane could see as well as me. How do you live?—I had a horse and car, which I sold, and a pig, and I got the relief. I sold the horse and car three weeks before. I got thirty-five shillings for the horse, and fifteen shillings for the car.

FIFTH WITNESS.

Catherine Keane sworn.—Examined by Mr. *Bennett*.

[This witness was examined through an interpreter.]

I live in Caradota. I was in Synon Curtin's house on the 31st of December last. I saw five men come into the house. They swore Synon Curtin on a book not to tell what occurred. They put him on his knees. Hearse was one of them. I do not know any of the others. I did not see a pistol or gun with any of them.

Cross-examined by Mr. *O'Hea*.

It was not Curtin told me to tell this. Was it not to water the donkey Curtin went?—So he said.

SIXTH WITNESS.

Peter Curtin sworn.—Examined by Mr. *Plunket*.

I am son of Synon Curtin. I recollect the night the party came to the house. Five men came. I saw them. I would know two of them.—[Witness identified Duggan and M'Mahon.]—When they came in they dragged my father out of bed, they knocked him down, and put him upon his knees, and put the book in his hand. What did they then do?—I do not know. Did they make him kiss the book?—They did. Where were you?—I was in bed. I saw a pistol with one of them. I do not know what they said to my father. Were they speaking at all to him?—I do not know. How long did they stay?—A little while. I was at Kilrush barrack the next morning.

Cross-examined by Mr. *O'Hea*.

Who watered the ass?—My father watered the ass that evening. I used sometimes to water it. Where was your father when they came?—In bed. Were you in bed with him?—I was not. Did you see the pistol put to his head?—No, it was to his belly. Did you hear a man say he would blow his brains out?—I did not hear them say any thing at all. Did you see your mother making starch that day?—I do not know. Did you see your father write?—I never saw him write; there was not a pen and ink in the house. Are you very poor?—We are. Were you here last Assizes?—I was, when Mr. Vandeleur's pump was broken. I was not examined as a witness.

SEVENTH WITNESS.

John Mullarchy sworn.—Examined by the *Solicitor-General*.

I have been stationed in Kilrush fifteen years. Three threatening notices have been posted there within the last few months. The house of Mr. Eustace was attacked; that is seven miles from Kilrush. There were no other agrarian outrages.

Cross-examined by Mr. *O'Hea*.

One of the notices was posted at Kilkee; another in the town of Kilrush, and the third at Rath, three miles from Kilrush.

The case for the prosecution here closed.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, in this case the prisoners are indicted for having unlawfully assembled and posted the threatening notice you have heard read. If you believe the evidence of M'Mahon, he found the notice posted on the gate and the paste quite fresh upon it. That the notice was so posted there can be no manner of doubt; and the question for you to consider is, whether you believe the evidence of this family—[His Lordship briefly recapitulated the evidence; and the jury, without leaving the box, found a verdict of Guilty against all the prisoners.]

At half-past five o'clock the Court adjourned.

Monday, January 17.

Fifth Day.

SENTENCE ON MICHAEL BUTLER AND MATTHEW HOURIGAN FOR THE
MURDER OF PATRICK CLEARY.

At half-past ten o'clock the Judges took their seats.

Michael Butler and *Matthew Hourigan* were then placed at the bar, and the CHIEF BARON, in passing sentence, addressed them as follows :—

Michael Butler and Matthew Hourigan, on the last day on which this Court sat, it was our duty to pronounce sentence of death upon two men convicted of the crime of murder in that most odious and fearful of its forms, assassination. On this day it becomes our distressing duty to pronounce a similar doom upon two fellow-creatures convicted of the same dreadful crime. I took occasion then to observe upon the nature of that crime, and upon its effects on every class in any community accursed with its infliction. I in effect said that when it was directed against one class from one set of motives, it would assuredly be found assailing other classes prompted by other motives, or by different passions. In that case Mr. Watson, the person against whom the assassin aimed his death-blow, was a person in the rank of of a gentleman. Patrick Cleary, your victim, was a person in the humblest rank of life. Mr. Watson was the agent of the proprietor of a landed estate, and he appears to have been murdered in consequence of some act connected with the management of the land, the property of his employer. Patrick Cleary had no land which he could be forced to let ; there were no rents which, by the infliction of his death, he could be prevented from recovering : he was not a claimant competing with others, and other motives prompted to the perpetration of his murder.

Some evidence appeared before us showing that he and his wife had been at an Assizes in this county examined as witnesses upon some prosecution which failed. Whether that was or was not the origin of his assassination is not very material for the purpose of what I am saying. This is certain, that his murder arose from some circumstance

connected with the relation in which he in his humble rank of life stood towards you and towards others, of whose malignity and wickedness you have made yourselves the guilty instruments. This case therefore illustrates the truth—the plain and obvious truth—that I before took occasion to suggest, that where the crime of assassination does exist and prevail in society, there is no class from the richest to the poorest—from the highest to the lowest—that is not within the reach of its perils. The case now before us speaks a lesson of another and a different kind. It will show to those who are engaged or tempted to become engaged in planning the commission of these dreadful atrocities, that however apparently secure they have made themselves from detection, there is that in the inscrutable ways and decrees of Providence which will ultimately bring them to justice and punishment. Of the two men who were last convicted before us, their detection was accomplished by the apparently accidental straying near the scene of the murder of two young boys. How has detection followed—how have the proofs been raised up in the case now before us? Patrick Cleary was travelling late upon a winter's evening on a road on which there was no person near enough at that period of the evening to have discovered you while committing this dreadful crime. Three men, of whom you were two, waylaid him; one of you, Michael Butler, placed a fire-arm in immediate contiguity with his person and gave him his death wound. So near were you placed to him—so apparently certain were you of inflicting instant death—that death which would have made it impossible that he should have appeared before you as witness to bring home guilt to you; so near, I say, were you placed to him, that in the discharge of the fire-arm his clothes were singed and his flesh burned at the spot at which the fatal bullet entered his body. Doubtless you believed that detection was impossible, that no human eye but that of the murdered man could see you. Doubtless you believed that you left him dead, and that no testimony of your guilt would ever arise in judgment against you. Providence decreed it otherwise. That Power by which you were seen to commit the deed preserved the life of Cleary to identify you—to make one of those declarations which the law accredits—because they are made on occasions perhaps the best calculated for testing the truth of man, when under a sense of the immediate approach of death, standing on the brink of eternity, he feels that he is stepping over it into the presence of his Maker and his Judge. By that unexpected testimony you have been convicted. Does not this

case present a solemn warning to all who may have learned the particulars of your trial, that however they may guard themselves in the perpetration of that crime in which they take away the life of a fellow-creature, Providence may bring up against them the evidence of their guilt, as against you the evidence has been brought by which you are convicted. If this crime were perpetrated in order to punish this unhappy man for having given evidence in a Court of Justice, or by his death to deter others from appearing to give evidence when called on to do so, by the law of the land, this case proves how abortive is the endeavour so to arrest the progress of justice. This prosecution has been successfully conducted against you to a conviction, partly by the testimony of one of those very persons who had been examined on the former trial. The wife of Cleary was examined at the former trial. She has now come forward to give her testimony against you, undeterred by the murder of her husband.

In a case tried in the county of Limerick, under this Commission, an unfortunate man in an humble rank of life was murdered by the man whom he had prosecuted for maltreating his servant. The perpetrator of that murder was brought to justice by persons who witnessed the infliction of death, as a punishment for resorting to the law. Nothing can show more clearly than those proceedings which have taken place before us, how vain it is on the part of those engaged in the outrages now the subject of consideration, to baffle or arrest the progress of the law. They cannot shorten the arm of justice. Have they prevented prosecutors from coming forward? Have they deterred witnesses from giving testimony? Have they weakened the force of prosecutions? Never were prosecutions more effectual—never were prosecutors more firm in reliance on the law—never were witnesses more intrepid in giving testimony.

Those who hope in this way to obstruct justice will learn from the proceedings of this Commission how vain and abortive those efforts must be. I do not prolong these observations to persons in the unhappy situation in which you stand, to add to the pain and misery of your position, but it is my duty thus to speak, with a view to the warning and instruction of others. I have now only to exhort you, as I do, with the utmost sincerity and anxiety, to prepare in the short period of life left to you, for that long journey which you have soon to travel. Reflect upon your past life. Do so for the purpose of nourishing in your hearts a spirit of sincere repentance. Apply yourselves to that exercise of penitence and devotion in which you will have ample

assistance. As each day closes upon you, as each evening darkens upon your cell, remember that it cuts off another day from the short period of your existence. Let that reflection stimulate you to more earnest devotion in that night, and upon the morrow. So may you, on the day on which it will be our duty to name, be prepared to receive that pardon from Heaven, which by the inexorable laws of your country must be denied to you here.

His Lordship then sentenced the prisoners to be executed on Thursday the 17th of February.

Same day—eleven o'clock.

TRIAL OF JOHN CROWE,

FOR CONSPIRACY TO MURDER JAMES WATSON.

The prisoner was then given in charge on an indictment that William Ryan, Patrick Ryan, and James Hayes, did feloniously kill and murder James Watson, on the 17th of May 1847, at Ballycorney in the county of Clare; and that before the commission of the said murder, the prisoner John Crowe did incite, procure, counsel and advise the said William Ryan, Patrick Ryan, and James Hayes, to commit the said felony and murder.

The long panel having been called over, the prisoner challenged thirteen peremptorily.

John Singleton, who was called on this jury, was challenged for cause, on the ground that he had been one of the jury who tried Ryan and Hayes for the murder of Mr. Watson.

The *Attorney-General* said this objection could not be allowed, it being no ground to challenge for cause, and so refused to set him aside.

The juror was then challenged peremptorily.

The following jury were then sworn:—

James Blake Butler.	Alexander Bannatyne.
William Adams Brew.	John Macbeth.
David John Wilson.	Henry Bolton.
John Blood.	Ralph Cullinan.
William Arthur.	Francis Hoegrave.
Henry Spaight.	Richard Davis.

The *Attorney-General* then stated the case for the Crown.

Gentlemen of the Jury, the prisoner at the bar stands charged with an offence which, although not in itself amounting to the crime of murder, yet it is one which the law renders equally penal; and the unhappy offender is equally responsible for the crime. He is charged not with having been actually present aiding and abetting, but with

having procured, counselled and advised others to commit a murder, which was perpetrated in pursuance of his advice and counsel; and for such offence the law renders such a person equally responsible with the individual who perpetrates the crime; and perhaps in a moral point of view the guilt of such a person is not less than that of the unhappy persons who were induced to commit this crime.

The person who was murdered was Mr. Watson; he resided in this county, and was agent to Mr. Arthur, who resides at some short distance from the place where Mr. Watson lived. The prisoner at the bar, John Crowe, appears to have been a person in rather a better condition of life than those persons who have hitherto appeared at the bar. If the case for the Crown be right, and if you have no reason to doubt the truth of the evidence which will be brought before you, it will show that although he procured the murder to have been committed, he thought that by being absent from the scene, and by going to the house of Mr. Arthur at the time of the commission of the murder, that he had thereby procured a faithworthy witness to show that he was not a party in the perpetration of this outrage. But the ways of Providence are inscrutable; and I am certain you will come to the conclusion that fact will be a very strong link to show his participation in the crime with which he is charged.

So far as we have been able to ascertain the motive for the perpetration of this crime, it appears connected with the management of Mr. Arthur's property by Mr. Watson. The prisoner was tenant to a farm of considerable extent under Mr. Arthur, and some of his property, consisting of ten cows and a bull, were distrained for rent due to Mr. Arthur and sold; and Crowe himself, in the presence of the persons charged with the murder of Mr. Watson, stated that perhaps the seizing of these cattle would be a dear act to Mr. Watson; perhaps he will yet pay for the cattle he had distrained. It will further appear that several interviews took place immediately before the perpetration of the murder, between Crowe and two of the principal persons concerned in the murder, James Hayes and Ryan (Small) (who have been convicted for this murder), and a third person, William Ryan (Puck), who inflicted the mortal wound, but who has not been indicted, because he has lately forfeited his life for an offence of equal enormity. Independent of that evidence, it will appear that on the night before the murder, William Ryan (Puck) and a stranger whom the witness cannot identify, but whom the evidence will show to be Ryan (Small), slept in the house of the prisoner Crowe. Crowe resided about a mile

and a-half from the residence of Mr. Watson. His house was situated upon a rising ground, so that from it the house of Mr. Watson could be seen; and any person coming from Mr. Watson's house towards Mr. Arthur's could easily be seen. It will also appear from the evidence that the prisoner told one of the persons who committed the murder to let him know when Mr. Watson would go to Mr. Arthur's. The two Ryans and a man named Wilkinson (also charged with this offence) slept in the house of the prisoner the night before the murder. The prisoner himself did not sleep there that night, but he arrived early in the morning and found there the two Ryans, his servant and Wilkinson (who lives about a mile from the prisoner). It will also appear that the prisoner was present when the arms were loaded, by which it was intended to take away the life of that unfortunate gentleman. It was not, however, by fire-arms that his life was taken; but the evidence will show that was their original intention; and that in consideration of a certain sum of money those parties undertook to commit that vile act; and that at the same time they proceeded to the scene of the murder, the prisoner went to the house of Mr. Arthur, in order that Mr. Arthur might be a witness to prove that he was not the party engaged in the murder. Three persons proceeded to commit the murder; Kelly, one of those three, separated from the other two, and a man named Hayes came into his place, and went with the other two to the place where the murder was committed. When Mr. Watson rode up to the place where they were lying in wait for him, William Ryan leaped out of the ditch, and Mr. Watson thereupon endeavoured to make his escape; but Patrick Ryan (the other assassin), who was before him on the road, stopped his horse. Mr. Watson was then thrown from his horse, and when falling, he discharged his pistol. They then beat him in such a way, that he shortly afterwards died. The instrument (a gun) with which Mr. Watson was beaten was broken with the violence of the blow. That gun was taken from the house of Crowe: it was the property of his servant Kelly, and it was kept in Crowe's house with his knowledge, and was charged that very morning for the purpose of committing this awful crime.

Gentlemen, you will have to be satisfied that this murder was committed, and also that it was committed by the parties charged with it, and that the prisoner at the bar instigated all or some one of those persons to commit that crime. If the evidence which we will produce before you leaves no rational doubt upon your minds, you will be bound by the solemn obligation of the oath you have taken to find the

prisoner guilty. That evidence will be in a great measure circumstantial, and you will investigate it with great care; and if any doubt be left on your minds, you will give the prisoner the benefit of it.

FIRST WITNESS.

James Lacy sworn.—Examined by the *Solicitor-General*.

I remember the day Mr. Watson was murdered. I live near the place where he was murdered. I know where Mr. Watson lived. There is a mill on his property, not far from Mr. Watson's house. I was working at that mill at the time. I had returned home that morning to eat my breakfast. After breakfast I returned back to my work. The place where Mr. Watson's body was found is between my house and the entrance to Mr. Watson's house. I had to pass that place by going to my work. I remember seeing a person coming from the place where Mr. Watson's body was found, with a part of a gun in his hand. There was another person with him at the time. I first saw them on the road, and they then passed into a field. When going to my work, I was called by a person named Flynn, and went up to the body. I saw the men about two hundred perches from the place where the body lay. I knew one of these men before; his name is Ryan (Small). When the two men passed into the field they were joined by a third person, named James Hayes. I had known Hayes before. Ryan (Small) had the barrel of a gun in his hand. Ryan (Small) and James Hayes were the persons who were tried here a few days since. The gun had no stock to it. I went up to Mr. Watson and found him speechless, and assisted Flynn to bring him into Walsh's house. In raising him up, I found part of the stock of a gun under him. I left it behind me. After leaving the body in the house, I came back to the place where I had found it. There were other persons on the road then. The broken part of the gun was not there at that time. I then went to my work. I was at that time stopping with my father-in-law on the townland of Ross. Flynn lived on the same townland. The body was found on the same townland. That townland is in the county of Clare.

Cross-examined by Mr. *O'Hea*.

I did not tell this story for a long time after the murder. I could not say how many months after the murder. I cannot say what day Mr. Watson was murdered. It was in or about the 17th of May. I told the story to Mr. Browne. I know a man named Newton. I did not tell it to Newton at all. I have often seen him both before and

after the murder. I have had conversations with him about business before the murder. Did you ever tell Thomas Newton that you would tell Mr. Arthur or Mr. Browne, but that you were afraid they would make you swear informations, and that you would not do so because it would be a disgrace to your family?—I told no such thing. Why did you not give information sooner?—Because I did not think well of doing it. Why did you not think well of doing it?—I could not tell you that. What changed you? were you of the same opinion before you told it as you are now?—Just the same. Where did you see Mr. Browne?—At O'Brien's-bridge. Did you speak to him before?—He asked me before if I knew the persons; I told him I did not. It was after I saw him in O'Brien's-bridge that I saw him in Limerick. Were you looking for land?—I told you before I was. I was looking for the land of James Crowe, my grandfather. He is dead. Under-tenants held it latterly. I cannot tell to whom they paid their rent. Had John Crowe this land?—I cannot tell. What did Mr. Browne tell you about it?—He would not tell me any thing. He would make me no answer. He would neither promise me or give it to me. Did you expect it?—I did not. Is there an ejectment pending?—I do not know whether there is or not. Did you not prove service of it?—I did; there was some error in the service. I was not employed in the mill at the time I gave my informations; I was discharged for not giving information. I was a long time idle after that. I was then employed by Mr. Arthur and Mr. Browne. Is Mr. Browne the man who is getting up the case?—I do not know. It was to him I gave my information. My father was killed; it was on account of the Crowes I take him to have been murdered. They got the farm from me when we were not able to pay for it after my father was killed.

Mr. *O'Hea* here read witness's information, sworn before John Browne, on the 11th October 1847.

“I remember the day the late James Watson, of Millbrook, was murdered. I came out of my house to return to my work after eating my breakfast. When on the road, two men came up the road against me, from the direction of Mr. Watson's place. I knew them then; their names are James Hayes, commonly called Butt Hayes, and Patrick Ryan, called Ryan (Small). They were walking very fast, and appeared in a hurry. Ryan had the barrel of the gun and part of the stock attached to it in his hand. The butt-end of the stock appeared to have been broken off. I went on a piece of the road to my work, and towards Mr. Watson's house. After going on a little distance, I saw Flynn's son beckoning to me; I went down to him,

and saw Mr. Watson lying on the road, bleeding and cut about the head. He was speechless. I saw the broken butt of the stock of a gun on the road near where Mr. Watson was lying. I assisted to take Mr. Watson into Walsh's house, and from that to his own."

When you swore your informations did you know the day of the month?—I do not know exactly, but it was in or about the 17th. Did you swear it was Hayes and Ryan you met?—I did not swear it was Hayes that was with Ryan, but that Ryan met him in the field. The information I gave was, that Ryan (Small) and the man whom I did not know came up against me, and that Hayes met them. I mentioned those men to the magistrate. I heard no shot at all. I met the two men about two hundred yards from the place where the man was murdered. I was not on the road, I was standing on the ditch when they passed me; they passed me on the other side of the ditch. I went to the ditch because it was a short way from my house to where I was working. I did not swear I was standing on the road, I was standing on the ditch. I know James Crowe and John Crowe. I am not siding with them. I knew of a dispute about a cow, and I went to see what could be done about it, and I saw John Crowe hunting James Crowe, and I brought back the cow to the place it was taken from. I was taken up to give my information. I was taken up in the night and let out the next evening. I did not then give my information. I did not give it for a long time after.

CHIEF JUSTICE.—Was it in Limerick you swore your information?—No, in O'Brien's-bridge.

To the *Solicitor-General*.—The Crowe I spoke of as having the land was father to the prisoner. The ditch I stood on was the road ditch. I refused to give information when I was taken up. I did not tell Mr. Browne any thing until I swore my information.

SECOND WITNESS.

James Crowe sworn.—Examined by Mr. *Bennett*.

I know the prisoner—[Witness identified him.]—He is my uncle. He has a house in Killaloe, and he has also a house in Knockaderreen. These places are in the county of Clare. I remember the time the stock was sold by Mr. Arthur. It was in the month of May last. I remember the morning Mr. Watson was murdered. After breakfast that morning I was at Betty Brien's. Do you know Pat Flynn's boreen and the minister's field?—I do. The boreen leads to the high

road. I know the place where Mr. Watson was murdered. It is about half a mile from Crowe's house. There is a boreen from Crowe's house to the high road. You could see the groves of Mr. Watson's house from Crowe's house. Going to Mr. Watson's house from Crowe's, you go down the boreen to the road, and then you turn up to Mr. Watson's. The minister's field is on the other side of the road from Crowe's house. I was in the minister's field that morning. I recollect seeing three men that morning. I was then in the minister's field. I did not know the three men at that time. I saw Mr. Watson coming up the road that morning. When I saw Mr. Watson I was in Tom Hogan's garden near the end of the boreen which joins the high road. Mr. Watson was on horseback. I know Larry Flynn's ditch. I remember the men who were tried here a few days ago for Mr. Watson's murder. I was examined on that trial. I know Ryan (Puck). It was about ten o'clock when I saw Mr. Watson. He was riding towards where I was. I saw Ryan (Puck) then come out from behind Larry Flynn's ditch and present a gun at Mr. Watson. Mr. Watson turned round his horse, and went down the road to escape from Ryan (Puck). Patrick Ryan (Small) then met Mr. Watson. He came from behind Pat Walsh's ditch out of a wheat field. He came out on the road, and he caught the horse by the head. The horse dragged him a small piece, when he turned the horse round, and Mr. Watson then fell. Mr. Watson fired a shot, and Ryan (Puck) then struck him with a gun. He struck him more than once. He held the gun by the barrel, and the butt was broken off. Ryan (Small) struck him with a pistol; Mr. Watson cried out for mercy; and after breaking the gun they made off. I saw Hayes after that; he joined them afterwards, and went a piece with them, but not far. They went up the same road they came down; the three went together the cross of a field. One separated then from the other two. One of them went up Keogh's ditch; the other two went up the road towards the hill in the direction of Ballymolony wood; all this occurred in the county of Clare. I knew Ryan (Puck), and Ryan (Small), and Hayes. I saw Ryan (Puck) about a week before that at my uncle's house. My uncle was not there then. He was in Killaloe. He has a shop in Killaloe, and he mostly stops there. Killaloe is about three miles from Knockaderreen. I know James Kelly, he was in service with my uncle. My uncle's cows were canted by Mr. Watson. Did you hear your uncle say any thing after the cows were canted?—I did; I heard my uncle say he "never would get over the loss of the cows, and let him take the bull along with the rest." Kelly was not

by at this time ; I think this was more than a week before the murder. Did you ever hear Kelly say any thing before your uncle about the cows?—I did ; my uncle said he “never would get over the loss of the cows ;” and James Kelly said, “may be they would be dear cows to him yet.” Billy Ryan was then present. Did they say any thing about it being a bad job for Mr. Watson?—No. Kelly said “they might be dear cows to Mr. Watson.” Did your uncle say any thing?—No ; my uncle said nothing, but smiled a little, and Puck began to laugh. Did you ever see Hayes at your uncle’s house before the murder?—I did. When?—A good start before this conversation occurred ; about eight days or so before the murder, in my uncle’s yard at Knockaderreen. Did you see Puck after the murder?—I did ; I saw him about a week after in my uncle’s house. My uncle was not then at home. Kelly was out at work. I do not know whether Puck slept in the house that night. Puck slept in the house about a fortnight after the murder. My uncle used to sleep in Killaloe. I slept in Knockaderreen. Kelly used sometimes to sleep in Knockaderreen, and sometimes in Killaloe. I heard a conversation between Kelly and Ryan (Puck). My uncle was not present at that conversation.

To the CHIEF BARON.—The first time I saw Ryan (Puck) after the murder, at my uncle’s house, Kelly was out working on the farm.

To Mr. *Bennett*.—I saw Puck more than once at my uncle’s after the murder. I saw the stock of the gun after the murder. I got it under Mr. Watson, and hid it in Betty Brien’s haggard.—[The stock of a gun was here produced, and the witness identified it ; he knew it by the brass mounting, and some wire that was passed through it.]—I saw the gun in Ballynevin before this with James Kelly. It was a good start before. It was more than a fortnight before. It was not more than a month before. Was Puck by when you saw it with Kelly?—Not that Ryan (Puck), but another, Tom. After the murder Kelly saw the stock of the gun where I hid it. That was about five or six minutes after the murder. They had just taken Mr. Watson home, and Kelly came across the field. I showed him the butt of the gun. After Kelly saw it, I hid it in a gullet in Betty Brien’s haggard. Kelly saw me hide it. I afterwards went to look for it. I think it was the next day. I did not find it. I did not see it again until I saw it a couple of days since. Did William Ryan (Puck) say any thing to you before that about the butt of the gun?

CHIEF BARON.—Was your uncle present?—No.

CHIEF BARON.—This can be no evidence against the prisoner : the confession of a principal cannot be evidence against an accessory.

Examination resumed.—How many cows were taken?—Fifteen or sixteen. My uncle was offered the bull, but he would not take it. He wanted a milch cow. The bull was of no use to him. Other persons whose cows were taken got them back.

Cross-examined by Mr. *O'Hea*.

You were standing between the school-house and the place where Mr. Watson was killed?—I was. Did the men who killed him come up the road towards you?—They did not; they went off in another direction. Did they go along the road?—No; they went up into a field, up to Keogh's bog. Did they go towards Lacy's house?—They did not; they went from where they killed Mr. Watson, over the ditch, up to Keogh's bog. Did they not go out upon the road?—No. Did they go on the road at all?—After they met Hayes they went out on the road. Did they pass by Lacy's house?—They did not. Did you see Lacy on the ditch?—I did not. Where did they go?—They went over the ditch, up the wheat fields. Hayes went across a field with them, and then they separated, and two of them went to Ballymolony wood. Hayes went up a furze ditch. Where were you going that morning?—I was walking about. Had you any thing with you?—I had a pistol. What had you it for?—To fire about the road, if I could get any powder. Did you get any powder?—I met a son of Denny Brien's, and I got some powder and shot from him. Did you shoot a dog that day?—I did, but I did not kill him dead. That was about a quarter of an hour before the murder. I shot the dog in Betty Brien's haggard. Where did you go to then?—I went about my business. Did you play any cards that morning?—I did. What were you playing for?—I believe for fun. Who was playing with you?—A son of Denny Brien's. Where?—It was in the parlour in Betty Brien's house. Who had the deck of cards?—Five or six of us had it between us. How long before the murder did you commence playing?—It was a good while before. It was in my grandfather's time. Did your grandfather charge you with taking his money?—He did. You often took his money?—Yes. Without his knowledge?—I did. Is Johnny Crowe your brother?—He is. Does he not play cards?—He does not. Did you instruct him?—There is time enough. Where

did you get the pistol?—I ran away with it from Garrett Walsh the evening before the murder. Did you go out alone that morning?—I did. Was it after shooting the dog?—It was. Had you another charge?—I had five or six charges. What kind of powder had you?—It was quarry powder. You saw Mr. Watson fire the shot?—I did. He had the pistol in his right hand. Had he a second pistol?—He had; it was in his pocket, and was taken out of it when he was dead. What became of the pistol he fired?—I don't know. Could you find that pistol?—I do not know whether I could or not. What kind of pistol was it?—It was a square pistol. How do you know?—The comrade of it was a square pistol. Where did you hide it?—How could I hide it? Were there many people there?—There was a great many men gathered round. I saw Lacy coming down the road, but I did not see him standing on the ditch. The men who killed Mr. Watson did not go down the road. Where did you see Lacy?—Below Pat Flynn's boreen. I did not go on the ditch until after the murder was over. I need not stand on the ditch, for it was a low ditch. I did not stand on any high place. I went into the wheat field. The Ryans saw me on the road. They did not say any thing to me. Did you ever live in your uncle's house?—I never did. How could you tell who slept in it?—I used to sleep there off and on. I went to sleep there when the boy was in gaol. Ryan (Puck) slept there after the murder, and I slept with him. He came in late at night, went to bed, and went off at break of day. Have you and Johnny been talking about this business?—We have. Did you ask him to remember that Ryan (Puck) had been in the house?—I did not. Did you ask him about the stock of the gun?—I did not; he knew nothing about it. I asked him about nothing he did not know. I was three times with Mr. Browne. Were you talking to him about the murder?—Sometimes I was, and sometimes I was not. Was Johnny present?—No, he was not; Mr. Browne examined us separately. This was since I came to Ennis. Was your information read to you since you came to Ennis?—It was, by Mr. Browne. What kind of a gun had Hayes?—I could not say; he carried it under his frock, butt down. I could not say whether it was a short gun or a blunderbuss. I could see the butt of it, no more.

Mr. *O'Hea* read witness's information, sworn the 21st of December 1847, as follows:—

“I am nephew of John Crowe of Knockaderreen, and have often spent weeks in his house. I remember the time that John Crowe's stock was sold by the late James Watson for rent due to Mr. Arthur.

After the stock was sold I often saw William Ryan (Puck) and Patrick Ryan (Small) in Crowe's house, and different times heard John Crowe and James Kelly, his servant, say to Ryan (Puck) and Ryan (Small), it is a bad job for Mr. Watson that he sold the stock. I also often saw John Crowe and the two Ryans whispering together. I remember the day Mr. Watson was murdered, but I do not recollect the day of the month. On that day I saw James Hayes (Butt), William Ryan (Puck) and Patrick Ryan (Small) coming down from John Crowe's house at Knockaderreen towards Mr. Watson's house. Hayes had a blunderbuss or short gun with the barrel concealed under his coat, and the butt along his thigh; William Ryan (Puck) had a gun, and Ryan (Small) a pistol. I was standing near Pat Flynn's boreen, I saw Mr. Watson riding up the road. William Ryan (Puck) jumped out on the road from behind Flynn's ditch; when Mr. Watson saw them he turned round his horse to make off, when William Ryan (Small) jumped out at the other side of Mr. Watson, caught his horse by the bridle and turned him short round. Mr. Watson was thrown off his horse by the sudden turn, and when on the ground he fired a pistol at Ryan (Puck). Ryan (Puck) then struck Mr. Watson with the butt end of his gun and broke the gun on his head, and Ryan (Small) struck Mr. Watson with a pistol. Mr. Watson called for mercy and shouted. Hayes then joined them and they went off towards Ballymolony. Informant saith that he has often seen both Ryan (Small) and Ryan (Puck) in John Crowe's house at Knockaderreen since Mr. Watson was murdered."

Did you say in your informations that you heard John Crowe say it would be a bad job?—I did not. Was the information read to you?—It was. The story you now read was not the story was read for me.

To Mr. *Bennett*.—I heard Kelly say in the presence of John Crowe that it would be a bad Job for Mr. Watson. Crowe did not say that. After they separated they went up the road to Crowe's house.

A Juror.—How far from Lacy's house did they turn off the road?—Not far. Could a person see them from Lacy's house?—He could.

To Mr. *O'Hea*.—I did not see them pass Lacy's house.

To the CHIEF BARON.—Lacy's house is on the public road; the boreen is not far from it. Lacy's house is between the boreen and

where Mr. Watson was killed. The men I saw went into the wheat field. They never came back on the high road. I did not look in the direction of the school-house at the time.

A Juror.—What was your reason for firing at the dog that morning?—He was a blind dog, and I got leave to kill him. I slept in my own house that night. It is about half a mile from the place where Mr. Watson was murdered. Did you charge the pistol again after you had shot the dog?—I did. I saw Hayes at my uncle's house before the cattle were sold, but not after. When did you see Ryan (Puck) there?—Before the cattle were sold. Hayes is cousin to John Crowe's wife.

THIRD WITNESS.

John Crowe sworn.—Examined by the *Attorney-General*.

I am brother to the last witness. The prisoner is my uncle. I recollect the time Mr. Watson was killed. I then lived at my uncle's. I recollect the time my uncle's cattle were seized for rent. I think there was fifteen. I am not sure. Fourteen cows and a bull. There were seven milch cows. The rest were heiffers, except the bull. I heard my uncle say that they were sold. They were in Paradise before they were sold. I heard my uncle say "he would get the bull back, but he would not take it as he would not get some of the cows." I heard him say that the evening after the cant. I heard him say that those who had three cows were getting one out of them, and that he who had all the fields was only getting the bull. I slept in my uncle's house the night before Mr. Watson was killed. Michael Wilkinson, Ryan (Puck), and a boy named Michael Cruise slept with me that night. Cruise was my uncle's servant boy. Wilkinson lived over a mile from my uncle's house. I know James Kelly. He was my uncle's servant. He did not sleep in my uncle's house that night. My uncle did not sleep in the house that night; he slept in Killaloe. Do you recollect any person coming in the morning to your uncle's house?—I do; but I did not know him. He was a stranger to me. James Kelly came home in the morning; so did my uncle. I believe Kelly and my uncle came together. My uncle was home before breakfast. All the children, Ryan (Puck), Cruise and Wilkinson were then in the house. I am not sure whether the strange man came before or after my uncle. It was about the same time. Kelly and my uncle were mostly in together. I am not sure whether the strange man came with him; but he came before breakfast. Puck went to the dresser before my

uncle came home ; he took five bullets off the dresser. After my uncle came in, my uncle, Ryan (Puck), the strange boy, James Kelly and Michael Wilkinson went into the cow-house, where they remained about half an hour. This was before breakfast. Did they come back from the cow-house?—No ; Wilkinson went home, and the other three came back. What other three?—The other four—[correcting himself.]—They all came back together. I heard Puck say there were good charges in. Where were they then?—They were in the house. Kelly, Ryan (Puck), my uncle and the strange boy were there at the time. How long did they remain in the kitchen?—Not long. Did they breakfast there?—They went in to breakfast in the parlour. Who?—The four went into the parlour. I do not know did they take breakfast, for I went out for the horses.

To the CHIEF BARON.—They did not breakfast before they went into the parlour.

The *Attorney-General*.—How do you know they had not breakfasted?—Sure I know they had not. How long after they went into the parlour did you remain in the kitchen?—I did not remain any time. I went for the horses on the hill. I came out with Mickey Cruise to bring them in to plough. How long were you out for the horses?—About half an hour. When you came back were any of those persons in the house?—They were not. Was your uncle in the house?—No. Did you go into the parlour when you came back?—I did not. After you came back, did you see any of them?—I saw them about two fields off. Who did you see?—I saw Ryan (Puck), the strange boy, and James Kelly, going down the field together. In what direction were they going?—They were going towards the high-road. They were then over two fields from my uncle's house. It was after my uncle came I got my breakfast. Mick Cruise and the children breakfasted with me. Ryan (Puck) and the strange man did not breakfast with me. I breakfasted in the kitchen. I did not see Ryan (Puck) or the strange man eat breakfast. I saw my uncle in the evening. Did he say where he had been?—He said at Ballyquin, Mr. Arthur's place. That place is also called Glenomera. I knew Puck a long time before this. Did you see him in your uncle's house after the murder?—I did, a couple of times. He came there one evening about five o'clock. He came there another time with other boys. He did not sleep there after the murder. I remained at my uncle's a long time after the murder was committed.

To the CHIEF BARON.—They went to the cow-house before I took my breakfast, and they came back after I had eaten it. While they were in the cow-house I was eating my breakfast. The three men were going towards the high-road upon a small road going to the big road. I saw Mr. Watson killed in Walsh's house.

A Juror.—Did you see Hayes that morning?—I did not. Did you know him before?—I did not.

Cross-examined by Mr. *O'Hea*.

How old are you?—I do not know. Are you six?—I am. Are you twelve?—I do not know. Your uncle turned you out about three months after this?—He did. Were you with James when the cow was taken?—I was. Why did your uncle turn you out?—Because he said I told about the cow. Have you lived with James since?—I have. Did you ever play cards with James?—I did not. Did you ever see them play?—I did, an odd game. He used to play with a good many. I would not know the cards. When did you first tell this story?—I told it to Mr. Browne the magistrate. The police took me and brought me to the Bridge. I saw Mr. Browne there, and I told him what I am now telling; and the same story. Did you see Mr. Browne since you came to town?—I did; I saw him to-day. What did he say to you to-day?—He told me to be a good boy. Did he say to have good courage?—He did. Did he bring you into Court to-day?—He did. Did he ask you if you knew any of the prisoners?—I said I did not. Do you know Ryan (Small)?—I do not. Do you know Hayes?—I do not. Did you and James ever talk about this business?—We did. Did James ever ask you did you remember the night Ryan (Puck) slept in the house?—He did not. Did he ask you if you remembered about the other men?—He did not. What did he say?—I said Ryan (Puck) slept in the house the night before Mr. Watson was killed. The other strange man did not sleep in the house that night. I heard of the reward. I did not hear how much it was. A fine thing would keep a little boy all his life?—It was not for that at all. I never saw a pistol with James. I always told the same story. I was done breakfast when they came back from the cow-house. They went into the room. I did not see them eat their breakfast in the house. Ryan (Puck) never slept in the house after that.

Mr. *O'Hea* here read witness's information, sworn before John Browne on the 18th of January 1847, as follows:—

“I remember the day Mr. Watson was murdered. I was living

with my uncle John Crowe of Knockaderreen, at the time. On the night before the murder, Michael Wilkinson, William Ryan (Puck) and another man whose name I do not know, slept at my uncle's house at Knockaderreen. On the morning of the murder, Wilkinson, Ryan (Puck) and the strange man, my uncle John Crowe and James Kelly went out before breakfast to the cow-house, and stayed there some time. Before going out one of them took five bullets from off the dresser. When they returned, one of them said in my uncle's presence, 'we have put in good charges.' They then sat down to breakfast, and after breakfast my uncle went to Glenomera; and Michael Wilkinson went home, and the strange man, James Kelly and Ryan (Puck) went out towards Mr. Watson's place."

Do you now swear that the strange man slept in the house that night?—The strange man did not sleep there that night. It was wrong of Mr. Browne to take that note. Did Mr. Browne take it down intentionally wrong?—Faix he did. Did you see your uncle go to Glenomera?—I did not. Did you see them sit down to breakfast?—I did not, but the girl told me they sat down to breakfast. Ryan (Puck) never slept in the house after the murder. Are you sure of that?—I am. If your brother said Ryan (Puck) slept with you a week after the murder, would it be a lie?—It would. Did you say that the strange man, James Kelly and Ryan (Puck) went out towards Mr. Watson's place?—I do not know did they go towards Mr. Watson's place. I was going to the forge, when I came to Pat Walsh's. I did not see Hayes at all that morning. The three men I saw were Ryan (Puck), Kelly and the strange man. Did you say you saw no difference between Hayes and the strange man?—I did not know Hayes. I never heard the strange man was Ryan (Small). When Mr. Browne brought me into Court, the only question he asked me was, did I know the men; and if I did not know them, to say nothing. I said I did not know them. Mr. Browne told me to tell nothing but the truth. Did he tell you to be of good courage?—He did. Not to be afraid of Mr. O'Hea?—He did not, I would not be afraid of any one. Were you fighting with your uncle about the land?—I do not know. After I left my uncle's I went to Darby Wall; I then went to my aunt's. It was there I lived with my brother.

CHIEF BARON.—Would you know the strange man?—I would not. Where were you when Ryan (Puck) spoke about the charges?—I was at the fire. Do you know where Ryan (Puck) was when you spoke about the charges?—He was standing by the table. Did you

see a gun with any of them?—I did not. Did you see a gun with any of them that morning, as they went down the road?—They might have had it unknown to me.

CHIEF JUSTICE.—Did you sleep with your brother more than once, after the murder?—I did. He used often to be working with me.

FOURTH WITNESS.

Andrew Cullinan sworn.—Examined by Mr. *Plunket*.

I know Ryan (Small). I lived at Ballyhurley in May last. I lent some money to Ryan (Small) before the murder. I lent him one shilling and six-pence. I saw him after I lent him the money, in Killaloe. That was four or five days before the murder. We went into John Crowe's house, and he called for some spirits; and we had nearly drank it, when John Crowe came up with another boy I do not know. Crowe asked Ryan who I was, and said he wanted to speak a few words with him. I then got up and went out. Before we went into the house, I asked him for the one shilling and six-pence. He did not pay me that day. I saw Ryan (Small) a few days after, and he had five pounds. That was after the murder of Mr. Watson. Crowe said nothing else about my leaving the room.

Cross-examined by Mr. *O'Hea*.

When did you tell this?—I never told it until I came to the barrack. I told the story to Pat Culligan, a neighbour of mine. I heard there was a reward offered. I heard that a good start ago. I told Pat Culligan about three weeks ago. I did not send Pat Culligan to the police. Was it through Culligan the police came to know of it?—I think he told them of it. I was taken before Mr. Browne. He was not the nearest magistrate. Ryan (Small) showed me five notes of one pound each. I asked him for my money, and he told me he had no change, and he then took out the five pound notes, and showed them to me one after the other. They were new notes. I do not know what bank they were of. Did you see any name on them?—I did not. Did you see James Crowe's name across them?—I did not. What did you lend him the money for?—I don't know. Where did you lend it to him?—Not far from my own house. It was darkish when he showed them to me. I could read one of them. How much money do you expect for giving evidence?—Only my day's hire. Would you take blood-money?—No, I would not. Can you read?—No.

FIFTH WITNESS.

Garrett Shaughnessy sworn.—Examined by the *Solicitor-General*.

I live in Limerick. I was committed to the gaol of Limerick before last Christmas for having stolen butter. The butter was found with me. I know the prisoner John Crowe—[Witness identified him.]—I saw him the Wednesday before Christmas. I saw him first in the yard of the gaol. I was three nights in the same cell with him. I had some conversation with him. I had a brother-in-law living in Bridgetown; his name is Garrett Walsh. Crowe said he knew him; that he was an honest proper man. I told him he was my brother-in-law. I told him I was at the works on the Shannon. I was in the habit of seeing Crowe in the yard, and talking to him every day. The day after he came in he spoke to me about the cause of his being committed. I asked him what he was put in for; when he told me it was on suspicion of Mr. Watson's murder. I asked him what part of the county he came from. He said from near Killaloe. I told him a brother-in-law of mine lived near that. He asked me his name. I said it was Garrett Walsh. He said he was an honest proper man. On the second day I spoke to him; and he said he was glad to find a friend to speak to. He told me had had a good jaunt; that he was going to give money to his wife, and that the constable told him to keep it; that he might want it before he returned. He repeated this every day to me. We were in one cell for three nights. Did he say any thing about the circumstances of the murder?—He told me that thirteen head of cattle and a bull of his were canted. He did not say by whom. He said that on the Friday before Mr. Watson was murdered, he took his note to him for £70 or £80 to raise money to pay his rent, and that Watson refused him. And he then said, "God and man would not blame him to kill that ruffian." Did he say any thing about having gone any where on the day of the murder?—He said he went to Glenomera. He said his wife's cousin Hayes told him to be in Glenomera on that day, and have good witness, or that he should suffer for all. Did he say any thing about Kelly?—He said Kelly was taken seven weeks before; but they could get nothing out of him. How long did he hold this conversation?—From breakfast time until we would go to dinner. He said he gave a gun of his servant Kelly to Hayes, and that he got only the barrel of it back.

Cross-examined by Mr. *O'Hea*.

In all your experience of a gaol, did you ever know the like of this before?—No I did not; it was the Lord who did it. Did you tell it

immediately?—No. How soon?—About three days after. Who did you tell?—Forrest, a man who is married to my own second cousin. Where did you see him?—I met him in gaol. Mr. Browne came to me there, and I then made my information. Who put you in the cell with Crowe?—The turnkey. Was Forrest in under a charge?—He was. How does his wife live in Limerick? Does she not keep a bad house?—I believe she does. Were you talking it over with Forrest?—I was. Did he not say it would be a good thing to tell it?—I do not think he did. Did he not say that like an honest man you ought to tell?—He did, of course. You heard of the reward?—Very little. Had that any influence on you?—Very little. You were in under a charge of having stolen butter in your possession?—Yes. Were you tried for it?—No, I was not. Have the city prisoners been tried?—They have. Is Forrest still in gaol?—He is. Was Forrest tried?—He was, and convicted. After Forrest was tried, I was in the one cell with him. Did he tell you he had been convicted?—He did not say much about it. Did Crowe tell you the story every day?—He did. He would not stop five minutes telling me, still following me through the yard. He told me Hayes told him to find out the day Mr. Watson went to Glenomera. Did he state Mr. Watson went there on stated days?—He did not. Were you sent in to watch Crowe?—No. You had an eye on him?—I never was told by any person to have an eye or get any thing out of him. After I told Forrest, I went back to the same cell with Crowe. Were you there after you told the magistrates?—No. Crowe told a good deal of it to Mr. Forrest, but I am not certain. Forrest was not in the same cell with him. I know very well Forrest knew a good deal about it, for he told me he got a good deal of it from Crowe. Were you in the board-room of the gaol?—I was taken out of the cell one evening about six o'clock. Forrest and I were there alone until the governor came to us. I was there but an hour or half an hour with the governor. I made the disclosures to him, and I was then put back into the same cell with Crowe by the turnkey. Did he tell you to watch the man?—He did not. Forrest and I were talking part of the time about what Crowe said.

The *Solicitor-General*.—You say that same evening about six o'clock Forrest and you were in a room together?—Yes. When after that were you brought before Mr. Tracy the magistrate?—I cannot say. I made my information in gaol. From the time I made my information I was separated from Crowe.

To the CHIEF BARON.—I never was with him except the three last nights. For three nights before I left the cell he slept with me.

To a *Juror*.—Very little conversation he used to give me in the cell, because there was another with us in the cell. Was it upon his first coming into gaol he was put in your cell?—He was six or seven days in the gaol. It was before he was put with me into the cell he spoke to me about these matters. What conversations had you with the governor?—He asked me about Crowe, and I told him. The governor spoke to me before I was put in the same cell with Crowe. The third person in the cell never heard Crowe speak to me. There were a great many in the yard with me, about thirty persons. The yard is larger than this Court-house.

SIXTH WITNESS.

Denis Flynn sworn.—Examined by the *Solicitor-General*.

I knew the late Mr. Watson. I remember having heard a shot, and having come out of my father's house. When I came out I saw three men; two of the men were standing, and one was down. I saw one of the men who was standing with a gun, drawing a blow, as if trying to strike the man who was down. I then faced towards Ballycorney mills. I do not know how far I had gone when I met my brother; after telling him I ran towards the body. I was the first person with the body. Lacy then came up and raised Mr. Watson up, and I assisted Lacy. I did not see James Crowe until I came back from Mr. Watson's house. The whole county was collected then.

A *Juror*.—When you looked out, was the whole road up to the boreen within view?—I don't exactly know. I did not see any person on the road outside the boreen.

This witness was not cross-examined.

SEVENTH WITNESS.

Nathaniel Barton sworn.—Examined by Mr. *Bennett*.

I remember the day Mr. Watson was killed. I was at school that day. A boy came in and told me the Terrys were coming, I went out and I saw two men, one of them had a gun; he had the stock of the gun under his arm. They passed me by, and I heard a shot and screeches, and I ran up to where Mr. Watson was taken up. I

remember seeing a man in the police yard in Limerick. When I first saw him he was putting the gun down in his trousers.

This witness was not cross-examined.

EIGHTH WITNESS.

John Browne sworn.—Examined by Mr. *Plunket*.

I am a magistrate. I know the last witness, Barton. I was present when he identified Hayes, the man who was convicted for Mr. Watson's murder.

Cross-examined by Mr. *O'Hea*.

I know Lacy and a man named Thomas Newton. Newton made an information before me. Did he make his information before Lacy made his information?

The CHIEF JUSTICE.—You cannot ask that question until you produce the information.

Mr. *O'Hea*.—I wish to have the information produced.—[The information was then produced, bearing date the 31st day of July 1847.]

Newton made a communication to me in consequence of which I had Lacy taken up. There was a very large reward offered, about seven or eight hundred pounds. Did you take the information of John Crowe?—I took it as carefully as I could. Whatever I had wrote down he had stated to me. Did you do the same with regard to his brother?—I did. Lacy did not come to me in Limerick more than once. I sent him a message he should have full ingress and egress.

A Juror.—Had you any communication with Lacy before you took Newton's information?—No. I had a communication from Lacy that he would come to me to Limerick. He sent a message to Mr. Arthur and me that he would meet us in Limerick. Newton told me Lacy knew about the murder; that he knew the person but would not tell his name.

NINTH WITNESS.

John Leslie Worrall sworn.—Examined by The *Attorney-General*.

I am an engineer. I made a map of the country where Mr. Watson was murdered.—[The map was then handed to witness.]—Flynn's

house is between the place Mr. Watson was killed and Mr. Watson's house. There is a boreen leading from Flynn's house to the high road.

To Mr. *O'Hea*.—A person coming from Flynn's house could see a person where James Crowe stood. The murder took place about twenty yards from where Flynn stood, and about one hundred and ten yards from where James Crowe stood.

TENTH WITNESS.

Augustus Arthur sworn.—Examined by Mr. *Plunket*.

I live at Glenomera. I saw the prisoner there on the day Mr. Watson was murdered, about half-past twelve o'clock. Glenomera is about four miles from the place of the murder. My servant came to me about half-past ten with a message that Crowe wished to see me. Did Crowe say he had been waiting to see you?—No. Did he tell you his business?—He told me he came to settle about his cattle. The cattle had been sold, but were still in the possession of my brother.

To Mr. *O'Hea*.—Monday was a stated day with Mr. Watson to go to Glenomera.

ELEVENTH WITNESS.

George Purdon sworn.—Examined by Mr. *Bennett*.

I attended the late Mr. Watson. He was alive, but not conscious when I saw him. I saw him about eleven o'clock on the day he was injured. He lived to about the same hour on the following Friday. He had several injuries on the side of the head. He had concussion of the brain, and his skull was fractured. Some of the wounds were inflicted with a blunt instrument; some might have been done with the cock of a pistol. I think the fracture was done with that. He never recovered his consciousness; those wounds caused his death.

TWELFTH WITNESS.

George Sampson sworn.—Examined by *Plunket*.

I am Clerk of the Crown.—[Proves the entry in the Crown book of the conviction of Hayes and Ryan for the murder of James Watson.]

THIRTEENTH WITNESS.

Michael Whelan sworn.—Examined by the *Attorney-General*.

I am bailiff for Mr. Arthur. I recollect the day Mr. Watson was

killed. I was at Mr. Arthur's that day. I know the prisoner. I recollect seeing him at Mr. Arthur's on that day. He came there about ten o'clock. I cannot say where Mr. Arthur saw him. I saw him standing in the yard outside the stable door. I did not notice a horse with him. I think he was there off and on until the report came of Mr. Watson's death. He stopped there until about three o'clock. He was there before the report came. I think the report came about one o'clock. The last time I saw him was about three o'clock. He was walking about the place.

To Mr. *O'Hea*.—This was an office day with Mr. Watson, and the tenants used to come there to meet him.

The *Attorney-General*.—At the time you saw Crowe, had any other of the tenants come?—Yes, one man I recollect.

To a *Juror*.—I do not recollect that I had any conversation with him.

John Crowe re-called, and examined by the CHIEF BARON.

Who slept at your uncle's the night before the murder?—Wilkinson, Ryan (Puck), Cruise, and I; we slept in the same bed. Cruise was in the yard when the four men went into the cow-house. Could your uncle have heard what Puck said about the charges?—I am sure he could. I could not say whether Michael Cruise heard him.

The case for the Crown here closed.

Mr. *O'Hea* addressed the jury for the prisoner.

Gentlemen of the Jury, you will, I am sure, agree with me when I say that it is no exaggeration to assert that the present trial is as important as any that ever took place within the limits of your county: important not only as affecting the life of the prisoner at the bar, but far more important as it involves in it some principles of the deepest interest to the administration of justice.

The prisoner stands accused of a crime, of which, if he be proved guilty, there cannot be conceived a crime of deeper dye. If it be satisfactorily proved that he was the instigator, the procurer, and the hirer of the murderers of Mr. Watson, unquestionably his guilt, if not greater, is as great as that of any of the persons engaged in the actual perpetration of the deed. It is therefore that I ask of you to do what

I am convinced you will do, to put away from your minds any feelings that may have been created in them by the enormity of the accusation or by the rumours circulated to the prejudice of the prisoner. Rumour, the herald of falsehood more than the messenger of truth, has been dealing hardly with this man's name, and it is no easy matter for jurors to lay aside the prejudices which the stories they have heard must of necessity have created. But with men of your judgment, conscience and understanding, it is enough to mention this topic to secure the impartiality of your minds.

Gentlemen, if the removal of prejudices be a matter of importance, there is in this case another subject of importance equally vital to the administration of justice—I mean the consideration of the description of testimony upon which this accusation rests. I need scarcely tell you that when a man comes to be tried for his life in a Court of Justice, the evidence against him should be of the clearest character, and should issue from the lips of those upon whom you can place reliance. In this case I have to complain, bitterly to complain, in the name of offended law and insulted justice, of the practices which have been resorted to against the prisoner—practices which, if allowed to pass unrebuked or continue unchecked, would desecrate the name of law in the country, and convert this temple of justice into a slaughter-house. But I look to you to protect the laws, and my shield for injured justice is the conscience of twelve honest men. I will refer particularly to the practices I have alluded to when I come to speak to the particular evidence of the witnesses, and I will call upon you to treat the vile attempts to corrupt your verdict with horror and indignation, and to dash from your lips the poisoned chalice with its envenomed mixture. When I find a man's life attempted to be taken away by testimony such as appeared upon this trial—when I find a watch set upon a prisoner to catch the words that may fall from him sleeping or half awake—if such practices be encouraged, if this be not trampled in the dust at the very commencement, despair would take possession of me, and I would indeed look upon this day and this trial as fatal to the existence of law or justice in the land. I do not despair, I will not despair while I have twelve men to appeal to who will crush such practices, and will never suffer such evidence to win their verdict.

Justice has no connexion with evidence such as that ; she shrinks in horror from such a contact ; she is polluted by its touch ; she is tainted by its breath, and it were madness to hope she could escape from its embrace in health and purity. From first to last of this trial

falsehood has predominated ; throughout the whole, perjury has been the essence of the testimony—

“ The trail of the Serpent is over it all.”

But it is a part of the disease of the country, and it is vain to expect that the demoralization which has spread abroad should not find its way here also. It were idle to suppose that when all the evil passions are in full play around us—avarice, hatred, revenge, doing their work in every direction, that this Court-house should be exempted from their operation, or the witness-table free from their influence.

I have thought it right to make these few general remarks, before I go to the specific evidence in the case. Permit me now to call your attention to that evidence. The evidence here is entirely circumstantial ; for you have no direct testimony of any person charging the prisoner with procuring or hiring Mr. Watson’s murderers. You are called on to spell it out of the facts before you. In all cases founded on circumstantial evidence, two questions arise ; first, the truth of the circumstances, and secondly, the truth of the inferences to be drawn from the circumstances themselves, where proved to be true. Now, let me bring your attention to the several circumstances given in evidence here to-day, and I will then with confidence ask you, is this evidence such as would justify you in saying, beyond a doubt, the prisoner at the bar is guilty ?

To some of the witnesses I will only allude generally. Lacy was the first witness. If the circumstances deposed to by him were of consequence, as affecting the prisoner, I ask you could you trust such a man as that ? You recollect the contradictions between his evidence here to-day and what he deposed to before the magistrates. In his information he swore that the two men whom he met were Hayes and Ryan, and to-day he tells you they were the two Ryans : there is much beyond a contradiction in this. It is very important, not merely as to the guilt of the parties whom he has accused, but it goes to the question whether Lacy stood at all in that position in which he describes himself to have been : for, if you believe the testimony of two other witnesses, Lacy is perjured. There can be no mistake as to locality. He tells you that, after the two men passed him by on the road, they went into a field, and then separated ; but the other witness tells you that they never went on the road at all until after they had separated, but went directly after the murder into the field. It is therefore plain that one or other of these persons was not there. That part of the case scarcely affects the prisoner at the bar. Falsehood, however, pervades the entire of that story. He is making a

statement merely with a view to the reward, and to gratify his fierce malignant passions. Did you not hear him charging the prisoner with the murder of his father? Do you not suppose he would attempt any thing to obtain revenge?

Then you have the next witness, the boy James Crowe. Depravity is shocking at any age or at any time of life; but it is revolting to the last degree, when you see a boy so young in years, yet hoary in iniquity. I will venture to say there never was exhibited any greater degree of depravity than that which he displayed, and of which he seemed almost insensible and unaware. His nature is so depraved, and his mind so dead to all moral perceptions, that he seemed ignorant of the distinctions between vice and virtue. This young gambler, going about with his pistol, having the guardianship of his younger brother; borrowing the pistol on a previous evening; moving about on the morning of the murder, procuring powder and shot to charge it; that morning firing at a dog, and then coming down to the scene of this murder!—for what earthly purpose I cannot imagine, if it was not for the commission of some crime, exceeding even in atrocity his swearing here to-day. After what he has said this day, I fearlessly assert you cannot come to the conclusion that this case is free from the abomination of multifold perjury. He contradicts the first witness; and further, he contradicts the evidence given by himself in his information.

Then you have this third witness. What brought him forward? nothing but the desire of grasping his share of this £700, this reward which it is alleged the necessities of justice require to be paid to enable criminals to be brought to punishment: that man, Cullinan, who comes forward here to tell you that Ryan (Small) showed him a parcel of notes, and that he knew the amount of each and recognised the numbers on them, at the same time that he tells you he is unable to read. Ryan (Small) was tried here for the murder in question, and yet that witness was not produced as evidence against him; which evidence, if given, would have been most powerful, if true, for it would show that Ryan got that money for the price of Mr. Watson's blood. But it may be said that on Ryan's trial this evidence was not required. Every evidence is wanting that could exhibit truth, and if true, it should have been produced; but it was thought right not to rely on it in Ryan's case; whilst now, as a circumstance to bring home guilt to my client, some active meddler has raked up from some congenial den of infamy the evidence of this wretched man to pollute our ears. Do you believe that Ryan (Small) could have been

the fool this man describes him to be? Do you believe that he would go and borrow money from a man upon whom he had no claim, and that he would not have asked it from the man by whom it was said he was engaged to do this desperate deed?

Next, we have that witness John Crowe. He was driven away from the house of his uncle, and he goes to his brother James, and spends months with him. Have his morals been improved by the circumstance of his companionship with that brother, with whom he rehearses this story? Can you rest satisfied that that boy is a truth-telling witness? He unsays to-day what he had said before; and I may fairly put one worthless oath against the other. What is it that binds men together—what is it that keeps together the very framework of society, but the obligation of an oath?—and if you act upon such testimony as this, what safety is there for life or property?—[Mr. *O'Hea* here read the information of this witness.]—What he there states is either true or it is false. If an accuser states one thing at one time, and makes a different statement at another, his evidence should be scouted out of Court. Here is a contradiction which nothing can reconcile. It is not a contradiction between a statement made long since and one now told after a long lapse of time, for three weeks have only elapsed since he made that information up to the present day, when you have him swearing directly the reverse. But it may be said, it is a matter of little consequence whether the man he speaks of slept that night in Crowe's house or not. It is but of little consequence as to the transaction itself; but as to the amount of credit to be given to that young witness—the unrelenting enemy of the prisoner—it is of the utmost importance.

We now come to the next witness, Garrett Shaughnessy—that man who has degraded the name and character of a witness. You heard the story that that man related to you, and I ask you, for the sake of justice, to trample on that story. It would be an outrage on justice, it would be an insult to the laws of the land to let the evidence of that consummate villain affect the life or liberty of any man. What was his evidence? How was it obtained? He was set as a watch upon the prisoner, as a spy upon his words. Possibly in his wanderings through the prison-yard the prisoner may have used ambiguous words, he may have uttered some equivocal expressions, which may have been caught at by the active ears of the witness, or his friend Forrest, another prisoner condemned to punishment in that gaol. Evidence is required by an over-vigilant magistrate against the prisoner Crowe; and this man, charged with a felony, is put upon him as a

watch: he goes into the same cell with him, clings to him day after day, and night after night; and, according to his own testimony, he does not sleep, owing to his own anxiety to accomplish his object. He then is taken into the room with the governor of the prison; he is closeted with him, details that conversation, and is sent back to his work again. In this land, under British sway, a public functionary is proved to have so acted! A governor of a prison to become a spy upon his captives! If the justice of the country is to be so administered, it would be better that the very name should be blotted out from men's minds than that it should be stained, polluted and defiled by practices so base and abominable. The British law rejects such engines as these—the rack would be a blessing in comparison. I call upon you, whatever you do in this case, in the name of justice, in the name of God, not to allow that man's evidence to weigh with you. It was a frightful spectacle in a Court of Justice—an act in atrocity and cold-blooded villainy scarcely, if it all, exceeded by the crime which we are now investigating.

There was a third man in the cell, why was he not produced? or even Forrest, the friend of Shaughnessy, to support, if possible, this incredible story?

Such is the class of evidence upon which, from first to last, the life of this prisoner is sought to be taken away. Avarice, pollution, corruption, the desire of getting land, the love of vengeance, the love of reward, are all brought to bear in this case. All the motives that could induce persons actuated by such passions are brought into unrestricted operation. What is the prisoner charged with? That he, for the sake of a small sum of money, procured the commission of this murder. Am I wrong in saying that the influence of that motive was far more apparent in his prosecutors and their witnesses?

Gentlemen, but for a question put by my LORD CHIEF BARON, I would scarcely deem it necessary to produce a witness; he asked was not Cruise the servant-boy in the prisoner's house on the night before the murder. He was there, and you shall have him here to give testimony to you, and also the servant girl and the daughter of the unfortunate man at the bar, who will all be produced. I am always unwilling to have a member of a man's family produced as a witness in his behalf, conscious to what suspicion such testimony is exposed, but in this case he insists on her being brought upon the table to declare the truth. These witnesses will tell you who was in the house on that night.

But on whose testimony does the case mainly, if not altogether, rest?

Upon the evidence of John and James Crowe. Do they both speak the truth? does either of them? James Crowe tells you that in a week after the murder he slept in the same bed with his brother and Ryan (Puck), and John Crowe tells you that is not true. Which will you believe? But even supposing all they have sworn true, still the question remains, whether the charge in the indictment is made out? Did the prisoner incite and stimulate the commission of this murder? Possibly you may now see the reason for the production of this £5 witness. The prisoner being aware that the murder was about to be committed, that would not justify you in finding him guilty; the bare knowledge and permission would not be sufficient; they must prove that he incited and hired persons for the commission of it. Now, what evidence have you to draw that conclusion? It is said that Ryan (Puck) said there were good charges in the gun, and that the prisoner possibly might have heard those words used; that is the evidence, together with the evidence about the £5, and the evidence of that wretched man Shaughnessy, upon which you are called upon to take away this prisoner's life. Lord Coke, speaking of circumstantial evidence, says, "A man's life is not to be taken away by conjecture or strains of wit, but proveably demonstrated in a Court of Justice." Has this man's guilt been proveably demonstrated? There is a chasm in this case, and who will dare to fill it up? Who can say beyond conjecture what passed in the cow-house, called the secret tribunal? What man will dare to supply by conjecture what it is the duty of the evidence to fill up, if you believe the story at all, of persons assembling in that cow-house? But take all these matters, and suppose you believe every word true, the charge in the indictment remains still to be proved; the specific allegation remains to be demonstrated, that the prisoner at the bar procured the commission of this murder. It is said he complained of his cows being taken from him, and that is suggested as a motive. If he was grieved and annoyed at the moment he used that expression, can you carry it beyond the expression of an angry man? But the boy says that he smiled at an expression of Ryan (Puck); are the muscles of a man's face to be brought as evidence against him?

Gentlemen, you have this case now before you, and for the sake of the law we all cherish and the principles of justice we all love, I implore of you to acquit the prisoner.

Michael Cruise sworn.—Examined by Mr. *O'Hea*.

I remember the morning Mr. Watson was murdered. I remember

the night before that. Who slept with you that night?—No person but Johnny Crowe. Did any strange man sleep there that night?—No. Where did you sleep?—On the loft, the usual place in Crowe's house. How did you get on the loft?—By a ladder. I saw John Crowe the prisoner the next morning. Did you see any strange man the next morning?—I did not. Do you recollect the horse going to the forge?—I do. Before the horse went to the forge was any stranger in the house?—No. Did you know John Crowe the prisoner to have a gun?—No. How long were you with him?—Six or seven years. I am sure no stranger slept there that night, or was there the morning of the murder.

Cross-examined by the *Attorney-General*.

My master did not sleep there that night. He came there about eight o'clock in the morning, from Killaloe. Killaloe is two miles and a-half from Knockaderreen. When he came to the house I had done breakfast. My master eat his breakfast in Killaloe. What did you do that morning?—I tackled a pair of horses. I am not sure were they in the stable or on the grass. I tackled the horses in the stable. I gave them water before I tackled them. Do you recollect ever telling any one you were sent very far for them?—I do not. I slept that night in a loft at the back of the kitchen. What use was made of the room under the loft?—Sometimes there was a bed in it, sometimes potatoes. There was only one bed on the loft. There is another bed below stairs, in which the servant girl slept, with the children. There are three children; Mary Crowe, aged fourteen years, Biddy, younger than her, and a very young boy, William Crowe. The three slept in the one bed. That bed was in the parlour. The parlour is on the ground floor. I do not know Ryan (Puck) or Ryan (Small). I do not know Hayes. I saw a boy at a fair, and I was told his name was Hayes. I know Wilkinson. He lives about one mile from Crowe's house. I did not see him the night before the murder. Crowe has a servant named Kelly. He slept that night in Killaloe. He used sometimes to sleep with me. He came there that morning before my master came, and he told me he slept in Killaloe. I left my master in the house when I went to plough. Crowe had three horses. One of them went to the forge that morning, and the other two I took to plough. I never saw a gun about my master's house. I never saw a gun with Kelly.—[Witness was handed the broken stock of a gun.]—I never saw this before. I had bread and milk for my breakfast that morning. John Crowe and all of them had breakfast. We had done

breakfast when my master came. Kelly came there before my master. He got his breakfast after I went to plough. I did not see my master going to the cow-house that morning. I did not see Wilkinson that day. I heard nothing of the murder until one o'clock, when I came in to my dinner. My master was not at home when I came to my dinner. I do not know what time he left the house to go to Ballyquin. I left him in the house behind me. My master slept in Killaloe that night. I know where Mr. Arthur lives. I do not know how far his house is from Killaloe. There are two roads from his place into Killaloe. One road leads towards John Crowe's house, and another towards Bridgetown. Crowe's house is close to the upper road, between Killaloe and Ballyquin. I never saw Ryan (Puck), James Hayes, or Ryan (Small) at John Crowe's house. I heard Hayes was a relation of Crowe's wife. I never saw him at the house.

John Crowe was then confronted with this witness.

A Juror, to John Crowe.—Do you know Michael Cruise?—That is he (pointing to the other witness.) Is that the man you spoke of as being in the service of John Crowe?—It is. Who slept with you the night before Mr. Watson was murdered?—William Wilkinson and William Ryan (Puck) and him.

Juror, to Cruise.—Is that true or false?—It is false.

John Crowe.—It is not.

Juror, to Crowe.—Did you ever see William Ryan (Puck) at Crowe's house with Cruise?—I did; but I never heard him speak to Cruise. Who let William Ryan in?—Cruise and I and Wilkinson were in bed, and Wilkinson got up and let in William Ryan. Cruise was awake when Wilkinson came into bed. Was Cruise asleep when Ryan (Puck) came in?—I do not know. Who got up first?—Cruise and I; we left the others in bed behind us. Cruise and I went for the horses together. Where were the horses?—They were near the river, and he went with me to bring them in. Did Cruise know the horses were out?—He did. It was summer time, and the horses were out all along.

Mary Kelly sworn.—Examined by Mr. O'Hea.

I was servant to John Crowe the time Mr. Watson was murdered.

I am sister to James Kelly. I remember the night before the murder. No strange man slept in the house that night. Michael Cruise, Johnny Crowe, and the children were the only persons in the house that night. Cruise and Johnny Crowe slept in the loft. They went to the loft by a ladder. I saw no stranger there that night. My master and my brother came there in the morning. My brother came in first. I gave him his breakfast of bread and milk. My brother used sometimes to sleep at Killaloe, and sometimes there. I saw Johnny Crowe go out that morning. When my brother came in, he sent him to the forge to get the horse shod. Cruise was ploughing that day. My master went to Glenomera that day; he walked there.

CHIEF BARON.—How long was the bed on the loft?—It was the usual size. Do you think four people could sleep in it?—I do not think they could. How far is your master's house from Killaloe?—Two miles.

Cross-examined by the *Solicitor-General*.

Where did you sleep that night?—In the room below with the children. Four of us slept in the bed in that room. Where used Johnny Crowe to sleep?—On the loft. Where did your brother sleep that night?—In Killaloe. Did Cruise ever sleep at Killaloe?—He seldom slept there. When your brother slept at home, where did he sleep?—In the bed with the others. Who got the breakfast ready that morning?—I did; I gave the family their breakfast. What time did you get up that morning?—About six o'clock; I was up before Cruise. What did Cruise do when he got up?—He went to water the horses, I believe; he mostly did so. I do not know whether he did so that morning or not. Did they go to work before breakfast that morning?—They did not. What time did they get breakfast?—About seven o'clock. What did they breakfast on?—Bread and milk. Did your master eat any breakfast there?—He did not. What time did he come there?—About eight o'clock. How long were the family eating their breakfast?—About three quarters of an hour. Kelly eat his breakfast after the others had done breakfast. How soon did your master come in?—He came in after Kelly, about half an hour, I think; I know my brother had done breakfast before he came in. My brother was preparing the plough-irons to give them to Cruise. How long did your master stop in the house?—Only three or four minutes; he was getting papers to go to Bally-

quin. Did you ever see Ryan (Puck) in the house?—I never saw him until he was taken prisoner in Castle-Connell. Did you ever see Ryan (Small)?—I never saw him until I saw him a prisoner here. Do you know Wilkinson?—I do. Did you see him at the house?—I did, but I did not see him there that morning. Did you ever see James Hayes at the house?—I never did. James Hayes lives beyond Killaloe. I never saw a gun in the house. Do you know what bullets are or balls?—I do not. Or gunpowder?—I know nothing about gunpowder; I never saw a bullet to my knowledge. I know Johnny Crowe; I remember his coming into the house after my master had gone out. Did you say any thing to him about having given your master breakfast that day?—I did not. Nor to any person about having given him breakfast?—No. Was there a table in the parlour?—No; there was a table in the kitchen. Did you not tell the boy Crowe you gave your master his breakfast that morning?—I did not.

The boy Crowe was here confronted with this witness.

Solicitor-General, to Crowe.—Did you know Mary Kelly?—I do. Who gave you your breakfast that morning?—I am not sure was it she. Did you see her when the men were there that morning?—I did. Did she see Ryan (Puck) in the kitchen?—She did; and my master and Wilkinson with him. You said she prepared breakfast for them?—When we came back from the horses, she said she gave them bread, butter, and tea.

Mary Kelly.—On my oath I never did; on my oath I never gave a cup of tea to any man in the house.

Mr. O'Hea, to Crowe.—Did you see them sit down to breakfast?—I did not. Was there a kettle in the house?—There was. Did you see it?—I did; you will not get any cranny in me. Was there any table in the room?—There was not. Do you remember Cruise going for the horses to plough?—I do. Was it to the stable he went?—I am not sure.

Mary Crowe sworn.—Examined by *Mr. O'Hea*.

I am eldest daughter of the prisoner. I was living at Knockaderreen when Mr. Watson was murdered. I recollect the night before he was murdered. I slept in the parlour with the children that night. I saw

no stranger in the house that night. John Crowe and Cruise slept in the house that night. My father came there the next morning from Killaloe. John Kelly came there also. Kelly got breakfast there. My father only stopped four or five minutes; he then went off to Ballyquin.

Cross-examined by Mr. *Bennett*.

I knew that the cattle were taken for the rent by Mr. Watson. They had been taken about three weeks before; sixteen cows were taken. My father never got back any of them. I never heard him complain of his having distrained. Did you ever hear him say other persons had got back their cattle, but that he did not get his?—I did not. Kelly used to sleep in the house sometimes. I often saw strange men in the house. We often used to have strangers going to fairs at the place, and the police. I often saw Wilkinson in the house. I did not see him that morning. How do you remember that morning in particular?—Because a first cousin of mine was going to America; her name was Margaret Lacy. I do not know Ryan (Puck). I heard of him the time of his trial. I do not know Ryan (Small). I never saw him, to my knowledge. I was up that morning before the boy Crowe. I think he stopped within until he got his breakfast. Cruise went out before breakfast. Where were the horses that morning?—I do not know. Were they in the stable or in the bawn?—They used to get clover that time of the year. I do not know were they kept in the stable. Kelly got his breakfast after us. We got bread and milk for breakfast. The working men used often to breakfast there. I know Kelly. I never saw a gun with him. I never saw a gun in the house, except a person would bring one there. I do not recollect a gun being in my father's house. I saw the police and revenue men there with guns. I know James Crowe. He used not to be often in the house. He only slept there one or two nights at the time we had him on business at Sessions. Kelly got his breakfast and then went to get the plough ready for the other boys. He wanted himself to go to a funeral of the child of a man named Tobin. I did not go to the funeral. Tobin did not live one mile from us. Kelly did not come home until after the funeral. He staid out until three or four o'clock. My father came back about one or two o'clock. Did your father go the week before that to Glenomera?—He did. He did not come that way until one or two o'clock. I heard about eleven o'clock of Mr. Watson's murder. Who did you hear it from?—A person came to the house and told me of it. What was Cruise doing that

day?—He was ploughing. Was your father at Mr. Watson's the day before?—I do not know. My father slept two or three nights of the week before at Killaloe. I do not know whether he slept at home three nights of the week before Mr. Watson was murdered. He used to be often in Killaloe. The night my father would sleep at home, I and Mary Kelly would settle a bed for ourselves, and my father would sleep with the children. Do you say that happened three times in the week before the murder?—He used often to sleep in Killaloe, and he used not often to sleep at home. When the work would be over about six o'clock he would go to Killaloe. He slept at home two nights the week before. He did not sleep at home the night after Mr. Watson was murdered. He slept at home the week after he was murdered. I often saw strange men sleep in the house; men going to fairs or other places. That was before we went to Killaloe, we used to have more beds then. My father had a shop in Killaloe about three months at that time. We did not take all the furniture there. We took all except two beds. What used you and the girl lie on when your father slept there?—We used to settle straw and bed-clothes.

To the CHIEF BARON.—My mother used to live in Killaloe. What brought James Crowe to the house?—He served persons with Crown summonses, and was to go to prove them, and slept in the house the night before.

The case for the defence here closed.

The *Solicitor-General* replied on the part of the Crown.

Gentlemen of the Jury, this is a trial of the greatest importance; it is important as involving a principle of the deepest interest to the administration of justice. Foul as is the crime of murder, the crime of a person who counsels and hires another to take away the life of another fellow-creature, is, if possible, one of deeper dye. The murderer who stalks abroad, with the instrument of destruction in his hands, takes upon himself the greater risk of punishment than the man who secretly procures the death of the victim. But there is a Providence that tracks the course of the murderer, and, by some providential intervention, witnesses are found to bring home conviction to the criminal.

This case presents two views for your consideration; for although the actual murderers have been convicted, yet from the nature of the

indictment, it is incumbent on us, in the first place, to prove the guilt of the parties concerned in that murder, just as if their trial had never taken place. It was for that reason that some evidence was called; and I should hardly be justified in occupying your time, by investigating the testimony establishing the guilt of Hayes and Ryan, but that some slight attempt had been made to cast some kind of doubt upon a portion of that testimony. An attempt was made to throw discredit upon the evidence of Lacy, by showing that his information did not agree with the evidence given by him this day on the table; however they do substantially agree, for he swears substantially to the identity of the party, although there appears a discrepancy as to the precise spot in which he had seen them. You will also remember that Flynn said, that the first thing that attracted his attention was a shot; he at that time had not come out on the road; he only saw the parties engaged, and he went off in a contrary direction. He fled from the scene, and ran for some distance and met his brother, and then returned back with him. Does not his evidence exactly tally with what Lacy told you, who identified the parties? therefore as to the commission of the murder there cannot be a shadow of doubt, or upon the justice of that conviction; and if your verdict be one of acquittal in this case, that verdict cannot create any doubt as to the guilt of the parties who committed the murder.

I will now call your attention to the charge brought against the prisoner, that is, that he was an accessory before the fact to this murder. An accessory before the fact is not a person who knows that a murder is about to be committed, but one who incites, procures and aids in the perpetration of a murder; and if you believe the evidence, there is ample proof of the prisoner being guilty of that offence. The nature of this accessorial offence appears of the character of all conspiracies; it is got up in secret, in closed chamber, and the man who sends out others to commit a murder fancies perhaps that he is secure, ignorant that the law makes him equally guilty as the actual perpetrators of the murder. But the difficulty in such a case is to obtain evidence of his guilt. He is surrounded by his family, servants and relatives, and persons engaged in his interest and inclined to screen him from detection. In this case the circumstances under which the Crown have been enabled to bring home guilt to the prisoner are these:—First, we say we have plainly shown that the prisoner entertained a most vindictive feeling against the man who sought to enforce his rights by a legal remedy; that he conceived his property had been unjustly taken from him. Then you find William Ryan, Patrick

Ryan, and James Hayes present at the commission of the murder ; they are strangers to the place. What brought them there? Whose cause did they come to avenge? They had no cause of their own ; if that be so, do you believe the statements made by the two Crowes of their connexion with the prisoner? Ryan and Hayes did not attempt to set up as a defence that they lived miles from the place on the other side of the Shannon. They did not attempt to allege that they were not on the lands of Ross at the time of the commission of the murder ; they might have done so, and if they had shown that the crime was not committed by them the prisoner could not be accessory to it. It is for you to say, can you, no matter what the feelings, no matter what the conduct, no matter what the principles of John Crowe, can you believe that he fabricated that story? can any man who heard the evidence believe that Ryan (Puck) was not in the house that night? The evidence is that he never was there. It was felt that if it were proved that he was in the house with his companions, it would go a long way in proving the guilt of the prisoner. You saw the way John Crowe gave his evidence. Experience will tell you that boys of that age seldom tell any thing but the truth : they tell simply what they saw, what they had witnessed ; they are incapable of inventing or fabricating a story. That boy was confronted with Cruise, and I ask you which of them told the truth? and I ask do you not believe that those persons slept in the house that night and assembled there for the purpose of the perpetration of that murder? The boy Barton proved that two persons came from the direction of Crowe's house. Hayes was unquestionably one of those persons ; he is identified both by Barton and Lacy, and positively sworn to by James Crowe ; the matter therefore rests with you whether you bring your minds to believe that this is a fabricated story. Does not the whole statement tally and square with a plan devised for getting this man murdered? Then again you have the prisoner proceeding to Arthur's house for the purpose of being enabled to prove an alibi for himself. Does not that circumstance betray a consciousness and privity in the transaction about to take place? Further, you heard with respect to the breaking of the gun, and of the stock being secreted and returned, and that is identified as the stock of the gun belonging to Kelly. Would Crowe dare to fabricate such a story as that? is that statement untrue?

CHIEF BARON.—Has the gun been identified?

The *Solicitor-General*.—It was identified in two ways; first, by two screws, and secondly, by a wire which the witness knew to have existed in the gun before it was broken.

CHIEF BARON.—I understood he merely identified it as part of the gun he found.

The CHIEF BARON then directed the witness James Crowe to be produced.

CHIEF BARON, to witness.—Did you ever see the stock before, that you took up on the road?—I did. How do you know it?—I know it by the colour, and the iron trigger, and the brass plate, and I saw a wire in it. I saw the gun Kelly had. I saw it at Ballynevis with Kelly. When I first took it off the road, I knew it to be part of Kelly's gun. Kelly desired me to take care of it until there would be an owner got for it. Were you up at the body before Kelly?—I was. The body was taken into Pat Walsh's house before Kelly came in. When did he tell you an owner would be found for it?—After taking up the body, in the garden he told me an owner would be found. How did Kelly know you had it?—I told him I had it. Did you show it to him?—I had it hid in a bush near Paddy Walsh's ditch. I first hid it in a bush, and I then brought it to the haggard, and Kelly and I hid it together. As soon as Mr. Watson was taken home, I took it to the haggard. I told Kelly, when he came down to the body, that I had the stock of the gun. I came back into the yard, after hiding the gun. He came to the haggard, and I showed it to him there. He saw me put it in the gullet.

The *Solicitor-General* then concluded his address :—

Gentlemen, having now called your attention to the offence and the evidence, it will be for you to say whether that evidence is faith-worthy. If both these boys have not fabricated a story, there has been a providential interference for the purpose of bringing home guilt to the prisoner.

With respect to the testimony of the other witnesses, Cullinan proves that the prisoner was no stranger to Ryan (Small); that they were seen together, and known to each other; and that is a fact the Crown were right in bringing to your notice.

With respect to Shaughnessy, the information having been made by him, it was our duty to produce him; and it will be for you to say

whether his is a fabricated story, or whether it is a probable and likely story. He and the prisoner were both confined together ; and is it not probable that the prisoner would communicate with him in reference to the offence with which he stood charged ? The prisoner does not admit his guilt ; he only spoke of individuals and circumstances, which having been communicated to us, we thought it important to have them in evidence. If Shaughnessy's story be true, it corroborates the testimony of the other witnesses ; because he spoke of facts which corroborate the testimony of the two Crowes ; that he was conscious of the transactions, and that he was a party to them. It will be for you to say whether Shaughnessy invented the entire of that story ; and also to consider, supposing you thought he did so, where he could obtain the materials, he being a prisoner at the time the transaction occurred. No artifice or stratagem was used to induce him to make these statements ; it was a mere voluntary statement made by a person an inmate of the same cell with him ; and the magistrates very properly, when the matter was communicated to them, had them separated ; so no charge can be brought against the Crown of being concerned in procuring this evidence.

But independent of his evidence, there is sufficient, if you believe the testimony of the two boys, and that they are telling a true story, to justify you in finding a verdict of guilty.

CHARGE.

The CHIEF BARON.

Gentlemen of the Jury, the prisoner at the bar is charged with the offence of being accessory, before the fact, to the crime of murder. The indictment charges, that William Ryan, Patrick Ryan, and James Hayes, on the 17th day of May, at Ballycorney in the county of Clare, did feloniously kill and murder James Watson, and that the prisoner did incite, move, procure, aid, counsel, hire and command the said William Ryan, Patrick Ryan, and James Hayes the said felony and murder to commit. The terms in which the charge is thus made, indicate the substance of what that charge is. I will read for you what the nature of the crime is : "An accessory before the fact is he who, being absent at the time of this felony committed, doth yet procure, counsel, command, or abet another to commit a felony." But, as has been observed by the Counsel for the prisoner, words amounting to a bare permission will not make an accessory before the fact : as, if A says he will kill another, and B says, "you may do your pleasure," that will not make B an accessory before the fact. The gist of the

offence is, does the party charged procure, counsel, command, or abet another? He may do that by encouragement, although he does not appear. It is for the jury to determine, from the conduct and language, and upon the circumstances which are disclosed in evidence, whether he was aiding, counselling, encouraging, or abetting what has taken place. The question is not, did he know the murder was intended to be committed; but, did he give active participation? In every case of this kind, that is a most material fact to be considered.

In order to establish the offence as now presented to you, it is necessary for you to be satisfied that the murder was committed, in point of fact, by the parties charged with it, to whose guilt the prisoner is charged with being accessory; and if you are satisfied that the parties so charged did commit the murder, then it will be essential for you to consider whether or not the prisoner did counsel and encourage them to commit that offence in the manner I have stated. So that you are substantially trying the parties charged with the original substantive offence. You cannot find the prisoner guilty unless you are satisfied the other parties are guilty of the murder: then you are to be satisfied of the participation, by the prisoner, in the offence, in the manner I have stated, prior to the commission of the offence.

With respect to the fact of the murder, no question has been raised; but, with respect to the persons by whom the murder was committed, evidence has been given that will be the subject for your consideration. The testimony of James Crowe, if you believe it, establishes that the murder was committed by William Ryan and Patrick Ryan; and, according to his evidence, there is testimony from which you may infer that, although Hayes was not on the spot on which the homicide was committed, yet he was near enough to afford assistance to those who did perpetrate it. He was near enough to aid them; and although he may not have been on the spot, so as to take a bodily part in doing the acts which caused death, yet if he was near enough for the purpose I have mentioned, in the eye of the law he would be constructively present. Evidence has, therefore, been offered, to show that Hayes was so circumstanced as to be near enough to aid the parties, so as to be constructively present at the murder.

Now let us look to the evidence with respect to the murder itself. Flynn, the first witness, does not identify any of the parties; but he states the circumstances of the attack much in the same manner as they are detailed by James Crowe. James Crowe tells you, that when standing in a particular place, which he describes, he saw three

persons coming from the direction of the defendant's house, and he says that those three men passed along the road, in the direction of the spot in which Mr. Watson was murdered. He states that he did not know those three men, until he had shifted his position from the main road to a breen, from which he had a view of the spot where the murder was perpetrated ; and he describes the mode in which that murder was perpetrated, the particulars of which it is unnecessary I should mention. He tells you that William Ryan and Patrick Ryan, after they had committed the murder, were met by a third man, Hayes, and the three men went then away together, and afterwards separated. Upon his testimony therefore, if you believe it, there is a positive identification of two persons being engaged in that assault, and that a third person afterwards joined them. That undoubtedly is sufficient evidence, if you believe it, for you to infer that although Hayes was not on the spot, yet he was there to assist, and if so, he was in the eye of the law present and abetting them. The evidence of this witness is impeached, but before I refer to the grounds of impeachment, I shall call your attention to the other evidence respecting the fact of the murder. The boy Barton tells you he saw from a spot, not far from where James Crowe was, two persons coming from the direction of the house of the prisoner, one of whom he identified, and that he had a gun, and was endeavouring to conceal it. He says to-day he could not identify Hayes; however he tells you that he knew him at the time, and you have it proved that he did identify that person as the person whom he had seen on that day, and he was the person who was subsequently convicted; therefore if the case stood upon his evidence alone, that in itself would not be sufficient; but the fact is to be taken into your consideration of his having seen two persons, one of whom was armed with a gun. That is not the only evidence, for there is also the testimony of Lacy. He describes what he saw as having taken place after the murder was perpetrated; he tells you that he saw a man with part of a gun in his hand, and that he and another passed him by in the field; that he knew one of them, Ryan (Small). As he describes, one of those two persons was in possession of the barrel of a gun, and the stock is found near the scene of the murder; he tells you that Hayes joined those two persons, so that if you believe him, Hayes was so circumstanced as to indicate such a contiguity as would enable him to afford assistance, if necessary.

That is the testimony offered to prove the fact of the murder. The fact of the conviction by the former jury of those two men,

you are bound in point of law not to treat that conviction as evidence of the fact of the murder, or of the guilt of the persons charged. In order to sustain the charge against the prisoner at the bar, it was necessary to prove the fact of the conviction, but merely to prove the fact that there had been such a conviction; but you are bound to consider the guilt of those persons, in reference to the evidence now produced before you, altogether independently of the fact of their having been previously tried.

The testimony of James Crowe has been impeached. That impeachment arises partly from his own account of his character and conduct, and partly from contradictions between his information and his evidence, and partly from discrepancies between his story and that of his brother John Crowe. That young lad was very fully cross-examined. He undoubtedly gave an account of himself in a former transaction, which is proper for you to consider with a view to his credit. He told you he was addicted to card-playing—that in itself is not a crime; but he says he was charged with having stolen money from his grandfather, and that charge was true. He tells you that some short time before the day the murder was committed, he ran away with a pistol, and whether he meant to restore that property to the owner does not appear. His habits were also made the subject of cross-examination. I will not go into this—your own good sense will tell, whether these or any of them tend to shake his credit, and you are to determine whether what has been disclosed are such as would induce you to withhold credit from him. You will also have to consider, if you act upon his testimony, to what extent you give him credit, and to what extent you are to look for some support to that evidence. With respect to his conduct on that occasion, there does appear, undoubtedly, to have been an intimacy between him and Kelly, which it is proper you should take into consideration. If he were an accomplice, you would be advised not to give credit to his story unless corroborated by other evidence; but even if he were so, you would have to consider whether or not in the testimony of Lacy and Barker, there was evidence to corroborate his, not merely as to the fact of the offence having been committed,—for that would not be sufficient—but as to the identity of the party charged with that offence. But I by no means suggest to you that you should infer he was an accomplice; but the evidence does raise a question for your consideration, in what situation he stood when he looked on at the perpetration of the murder? and when he apprised Kelly that he got the gun, and the language

used by Kelly, stating that an owner would be found for it—Kelly meaning thereby that he was the owner. That certainly does deserve your most serious consideration.

Again, his testimony is impeached upon a difference between his information and the parol evidence given by him to-day. He undoubtedly did state in his information that there were three persons whom he saw coming down from the direction of the place, and that he knew them. That may have been a mistake. He may have stated that, not intending to say that at that time he knew them, but intending to convey that at the time he swore the information, they were the three men, and he may have collected that from what he subsequently saw. However, it is undoubtedly for you to consider whether in that case he really did intend to convey that these three persons were recognised by him. The evidence of this witness has also been impeached; or rather, it has been alleged that his evidence ought to be received with great suspicion, because he has exhibited a state of things which indicate hostility to the prisoner. Now, it does appear that in some transaction between the families, a dispute in reference to land had arisen: and it will be for you to say how far this affects his credit.

The next witness is James Lacy. His testimony is also impeached. He now implicates Ryan (Small). His statement to-day was, that he did not know the other man, and that Ryan (Small) and the man he did not know were the persons who came up to him, and the third person who approached and came to meet them was not on the road, and he identifies him as Hayes. In his information he swears that Hayes was one of the two men on the road. On his cross-examination he says he did not make that statement which is attributed to him in his information; but Mr. Browne was examined before you, and he says his practice was to take down accurately the words of the witnesses, and to read them to the persons after taking them down. There is then this direct contradiction between his evidence this day and his information. Another circumstance is relied on as impeaching his testimony. He says that the two men came up to him on the road, and then passed into the fields; but James Crowe tells you they did not go along the road at all. It will be for you to say to what extent you consider these discrepancies a test of falsehood, or whether they be mistakes in matters so little material as not to shake the credit to be given to his testimony. The testimony of Barton is not impeached, but certainly I would not advise you to act on his evidence alone, for he appears to have lost all recollection in his own mind of the person he had previously seen.

Gentlemen, that is the testimony so far as the murder is to be regarded, as accessory to which murder, if you believe that it was so committed, the prisoner is charged. If you are not satisfied that this murder was committed, you cannot convict the prisoner ; but if satisfied that it was so committed by those persons, then comes the question whether the prisoner was accessory before the fact to the commission of that murder ? With respect to that, I am not in a condition to suggest to you that there is direct evidence of the guilt of the prisoner, but there is evidence from circumstances, conduct and language, upon which it is your solemn duty to determine whether this testimony leads you to the conclusion that the prisoner did counsel, encourage, aid, or abet, not being, of course, present. It is only necessary to point out the solemnity of the duty you have to discharge. You, of course, know that the life of the prisoner depends on your verdict. Until your verdict the law presumes him innocent, and before he be convicted you must, without any reasonable doubt, be satisfied of his guilt upon the evidence. I say upon the evidence, because it is your bounden and solemn duty entirely to dismiss every trace of any thing you may have heard before you came into the box ; you are bound to find, not on probability or suspicion, but upon testimony, and that alone. In judging of the evidence before you, it is not sufficient that you are satisfied, not that he knew of the perpetration of the crime, but you must be satisfied that he actually participated in aiding in the crime.

I shall now call your attention to three subjects for your consideration. These are circumstances independent of mere conduct, and the conduct and language of the prisoner : those being the causes from which you are to infer guilt, for it has not been directly proved. It is essential always to remember, that the mere existence of the circumstances which coexist with guilt will not entitle you to infer guilt. Circumstances consistent with guilt may also be consistent with innocence, and where inferences are to be drawn it is necessary you be satisfied in inferring guilt you are to come to a right conclusion. No rule can be laid down, your own good sense alone can guide you ; you alone can say whether you are to draw the inference without any reasonable doubt, and to say whether that guilt has been established.

Now, the first circumstance detailed in evidence is mentioned, I think, by James Crowe, who tells you that one at least of the prisoners charged with the murder was seen at the residence of the prisoner : but that is no evidence against the prisoner, for he was not there at the time : but it does appear to me a material fact for your consideration, a transaction which occurred at a period near the time of the murder.

With respect to the testimony of Andrew Cullinan, one of the witnesses, I may dispose of it in the first instance. He tells you that some four or five days after the murder was committed, Ryan (Small) had borrowed one shilling and sixpence from him, and that they went to Crowe's house, in Killaloe, and that Crowe said to Ryan, that he wanted a word with him: the witness thus brings Crowe in communication with Pat Ryan. Now, that is one of the circumstances consistent either with the guilt or innocence of the prisoner, but it is a circumstance which must be taken into your serious consideration. It appears that Crowe had a house at Killaloe, that he did not sleep constantly at his own farm, but that he and his wife resided the most part of their time at Killaloe. It does appear that there was not sufficient accommodation at the farm for the entire of the family, and that the prisoner was not in the habit of sleeping constantly there; therefore the fact of Pat Ryan having been seen there would be no further material, than showing the prisoner resided at that house, and that Ryan was known to him, some of the family having declared that they did not know him.—[His Lordship then recapitulated the evidence of John Crowe and James Crowe.]

Now, John Crowe says that Ryan (Puck) took bullets from the dresser, and remained out with the others for a period of half an hour, and upon their return there is a statement of one of the persons, who speaks of the charges of the fire-arms, with which some of the parties appear to have been armed. It is possible, of course, that these words may have been spoken—this communication may have been made—without any active participation by the prisoner in the design of the murder of Mr. Watson. But suppose you believe they collected for the purpose of committing crime, it will be for you to say whether the murder was then planned.—[His Lordship then detailed the remainder of the evidence.]

Now, it is a matter for your serious consideration, how far you will give credit to John Crowe. If you are satisfied that three persons were seen by James Crowe, the fair inference would be that John Kelly was not one of them, he not having been seen at the scene of the murder; and if you are satisfied that Kelly did not go down to the place in the manner described by John Crowe, of course you cannot believe his testimony. But it may be consistent with the fact of Kelly having left them, and Hayes gone in his place.

The Crown also rely on conversations which took place in the gaol, between the prisoner and one of the witnesses who was confined with him. His story is of such a nature as certainly would require a good

deal of sifting before you rely on it.—[His Lordship recapitulated the evidence of Shaughnessy.]

This comprises the whole of the evidence; and you will have to consider, first, whether you are satisfied that the murder was perpetrated by the persons charged with it; and you will next consider whether or not you are satisfied, beyond a reasonable doubt, of the prisoner's guilt.

It is unnecessary that I should go in detail into evidence for the defence. If you believe it, it entirely extinguishes the statements made by John Crowe. You are to decide between the credit you will give to those witnesses; and if you believe the evidence given for the defence, of course it will be impossible to find a verdict of guilty.

At a quarter past nine the jury retired, and in five minutes returned with a verdict of Guilty.

Tuesday, January 18.

Sixth Day.

TRIAL OF THOMAS M'INERNEY,

FOR THE MURDER OF MARTIN M'MAHON.

At half-past ten o'clock the Judges took their seats.

Thomas M'Inerney, Patrick Gueran, John Griffin and Charles Healy were placed at the bar, having been indicted for the wilful murder of Martin M'Mahon.

The prisoners refused to join in their challenges. *Thomas M'Inerney* was alone put on his trial.

The prisoner having challenged three peremptorily, the following jury were sworn:—

James Blake Butler.
David J. Wilson.
Mathew Canny.
John Crowe.
Francis M. Calcot.
James O'Dwyer.

David Ievers.
George Davis.
John B. Knox.
Burdett Moroney.
John Macbeth.
Ralph Cullinan.

The prisoner was then given in charge on an indictment for the wilful murder of Martin M'Mahon, on the 3rd of January 1848, at Carhumore, in the county of Clare.

The *Attorney-General* briefly stated the facts.

Gentlemen of the Jury, the prisoner at the bar stands charged with the crime of murder. This, perhaps, is one of the most distressing of the cases which has been brought forward in the course of the present Commission. It shows the dreadful consequences to which the unfortunate, misguided people in the class of life to which the prisoner belongs, have exposed themselves, for he has reduced himself to such a situation, that his life will probably be forfeited for this offence. The evidence will clearly show to you that he,

with a number of others, went to the house of M'Mahon, armed with fire-arms ; but it is right to state, that although they had arms, those arms were not loaded. They attacked the house of M'Mahon, and demanded arms. He resisted, and his brother, who came to his assistance, was so dreadfully beaten that he died of the effects of it in a few days. The police were out on duty that night, and the prisoner was found by them with his face blackened, coming from the direction of M'Mahon's house ; and Michael M'Mahon will be able to identify the prisoner as one of the party. What renders this case peculiarly distressing is, that this unfortunate man may not have gone with the intention of committing murder ; however, if he was one of the party who went to the house, he is guilty of the offence, if you are satisfied that he took an active part in it.

Another distressing feature in this case is, that this man was led to the commission of this outrage by force. However, the law admits of no distinction ; when a man allows himself to be brought into scenes such as the present, he exposes himself to the consequences. There are several persons joined in this charge, and we thought they would have joined in their challenges, so that you would have been enabled to consider the case of all together ; they have, however, thought proper not to join in their challenges, which they had an undoubted right to do ; and we in consequence have been able to put one only on his trial.

FIRST WITNESS.

Thady M'Mahon sworn.—Examined by the *Solicitor-General*.

I live at Carhumore in the county of Clare. I remember the night of the 3rd of January last. My house was attacked on that night by a party of men. They came to the house about nine o'clock. From six to seven or eight first entered the house. I was in my room at the time. I did not see them come in, but I heard the latch lifting. They came into the kitchen. A younger brother and a sister were in the kitchen. I was in the bed-room ; another brother and my sister were in bed, and a child of my sister's. I had two brothers who used to sleep in the barn, Martin and Michael ; Martin is dead. Some of the party were armed. I could not tell what arms all had, but I observed guns with some of them. Every man of them had their faces blackened. My sister called me, and I looked over the room door, and one of them snapped fire at my young brother, and I then took a shovel in my hand. Did you see the man who snapped the gun at your brother ?—I noticed the gun presented at him, but I did not know the man. Two of the men then presented guns at me. The

room door was then open, and I was thinking to come out. I was trying to see if I could know them while their guns were presented at me.—[Witness identified the prisoner as one of the men who presented a gun at him.]—I knew that man before. To the best of my belief, he lived within three-quarters of a mile of me, by going a short way. I have known him since I was able to know any person. There was a candle lighting on the table when they came; it remained lighting until after they went away. When the man made for my brother, I made a blow of the shovel at him, and knocked him down; he took up the gun to defend himself, and I broke the gun. Hehir Joek, the prisoner, then took him by the cape, and dragged him out towards the door. I could not say whether the prisoner did any thing after that in the house. While the attack was going on, I saw my brother Martin come in, and I saw him beat to death by some of this party. I was very much beat myself. After they beat me, my brother was beaten, and I could not go to his assistance. They beat me with guns, sticks, and wattles. The prisoner had a gun at the time he presented at me, to the best of my belief. I do not know whether he kept it afterwards. I have no doubt that the prisoner was one of the party. He swore most vehemently if I did not give him my gun, he would give me the contents of the gun which he had in his hand. My brother Martin lived about forty-eight hours after. He died on the night of the 5th. I saw him dead. He died in my house.

Cross-examined by Mr. *O'Hea*.

Were you alarmed?—I was. Was it the prisoner you struck with the shovel?—No. Your attention was engaged with the other man?—The other man was opposite me. The prisoner had his head down while he was pulling him out?—He had.

CHIEF JUSTICE.—Did you know the prisoner's voice?—It was not by his voice I knew him.

Mr. *O'Hea*.—Were you intimate with him before?—I might meet him three times a-week, sometimes every day in the week. You struck the first blow?—I did.

Solicitor-General.—Were you senseless at any time?—If I was, how could I go to a neighbour's house to send for a priest for my brother? I could not say how long the party were in the house.

SECOND WITNESS.

Michael M'Mahon sworn.—Examined by Mr. *Bennett*.

I was living with my brother Martin at the time of his death. I was in bed with him in the barn the night he was killed. We were not a quarter of an hour in bed when I was alarmed, and heard the party in the house, and my brother and I got up together and we came to the front door of the barn. It was locked outside; we then came to the back door and came out into the haggard. We leaped out of the haggard into the yard. I was then struck with a wattle on the nose, and I got another blow on the wrist. My brother Martin was along with me and went into the house. When I was struck on the hand I could do no good with it. I then went along-side of the barn until I got up to the window of the house. I could see into the house, for the window was broken open. I looked in and I saw Tom M'Inerney having a gun in his hand.—[Witness identified the prisoner.]—I could not say what he was doing, but he had a gun. I saw about six or seven men in the house at the time. I saw but two guns, the other men had weapons like sticks. I saw my brother Martin in the house at that time, and I saw another man beating him. My brother Thady was in the house, but I could not rightly know what he was doing. I was not long looking in the window. I was able to know the prisoner. I heard some one of the party demand arms, but I could not say it was the prisoner did so. I saw my brother Martin get two blows from two of the men. I saw the prisoner with a gun, but I did not see him strike my brother. There was a candle lighting in the room. The men's faces were blackened. I knew the prisoner although his face was blackened. He was standing on the floor. I saw no man lying on the floor except my brother who was killed. I was looking at them for about three or four minutes. I saw them go away. They left my brother across the fire. When they struck him he fell on the fire and they left him on it. I had no weapon. I was hurt and could take nothing in my hand. I then went to call the police. I found the stock and lock of a gun in the house; the barrel was broken out of it. When the police came to the house we gave it to them. I met the police at Kelly's gate, about half a mile from our house. I met three police. They arrested me, and I told them my story, and they went along the road, and we met three more of the police having M'Inerney and Guerin prisoners. These prisoners had their faces blackened. They were coming from the direction of M'Inerney's house. I knew the prisoner at once. We had a gun in the house. It was laid up behind the bed. They did

not get it. The prisoner is a labourer. I knew him before that so as to speak to him.

Cross-examined by Mr. *O'Hea*.

I was in great pain from the blow I got on the wrist. I was not at all frightened. I looked in through the window. When you saw the two men blackened, you said there are two of the party?—Yes. Did you tell the first policemen you met that M'Inerney was one of the party?—No. I did not wait to tell them. We had walked tight on a hundred yards before we met the other party. I did not say it was M'Inerney until after he was taken with his face blackened. My brother was brought to the police-office next day. I was not there.

To a *Juror*.—One of the doors of the barn was closed on the inside, the other was locked on the outside every night.

THIRD WITNESS.

Thomas M'Mahon, a boy aged about fourteen years, sworn.—Examined by Mr. *Plunket*.

I am brother to Thady M'Mahon. I was in the house the night it was attacked. I was in the kitchen; my sister Biddy was with me. The latch was lifted and about seven or eight persons came in. I saw guns with them. I do not know how many. I was not in bed at the time. I was washing my feet. I saw Thomas M'Inerney.—[Witness identified the prisoner.]—Either he or Pat Guerin presented a gun at me and snapped it. The prisoner was within the length of the gun of me.

Cross-examined by Mr. *O'Hea*.

I was frightened when the gun was snapped. I am not sure which of them snapped the gun. I never saw men with their faces blackened before. Did the black make much change in them?—It did. You would hardly know them?—You would. Did you hear your brother say it was M'Inerney?—I did. They said it must be M'Inerney that had his face blackened?—They did.

FOURTH WITNESS.

Mary M'Mahon sworn.—Examined by the *Solicitor-General*.

I am sister to Martin M'Mahon the deceased. I remember the night the men came to the house. I was in the room in bed when the men came in. My brother Thady was in the room with me. I was

not asleep. I looked out when they broke the door, and I saw Thomas M'Inerney. He was the first man who presented a gun at my brother. —[Witness identified the prisoner.]—I had known him before. His face was blackened.

Cross-examined by Mr. *O'Hea*.

I knew M'Inerney when I saw him presenting the gun at my brother. I never saw men before with their faces blackend. I do not know how old my sister Biddy is.

FIFTH WITNESS.

Sub-constable *Thomas Jones* sworn.—Examined by Mr. *Bennett*.

I was one of the party who arrested the prisoner. Sub-constable Staunton was with me. I was on patrol on the Limerick road in this county. I saw M'Inerney come over a ditch with his face blackened.—[Witness produced a broken gun.]—M'Inerney had this with him. It was broken when he had it. It was fastened to the stock by part of the guard. When I saw him he presented the gun at me, and threatened to blow my brains out. I seized him and knocked him down. He laid aside the gun, and I then handcuffed him, and took him to the barrack. This was about one mile from M'Mahon's house.

Cross-examined by Mr. *O'Hea*.

Was the gun loaded?—There was some kind of dust; some mixture of powder in it, such as would do no mischief.

CHIEF JUSTICE.—Do you know where the prisoner's house is?—I do. Was he coming in that direction from M'Mahon's house?—He was.

SIXTH WITNESS.

James M'Dermott sworn.—Examined by the *Solicitor-General*.

I am a doctor. I live in Newmarket. I saw Martin M'Mahon on Tuesday, the 4th January last. I examined his person; he had injuries which caused his death. There were four wounds on his head, one on the poll, another on the side of the head, and a third which fractured his skull. That wound might have been inflicted by the lock of a gun. He had no gun-shot wound. He died on the following day. He died of those wounds on the head. He had two small wounds on his arm. The wounds on the head were adequate to produce death.

The case here closed.

Mr. *O'Hea* did not address the jury.

CHARGE.

THE CHIEF JUSTICE.

Gentlemen of the Jury, in this case, the prisoner at the bar stands charged with the murder of Martin M'Mahon. There can be no doubt whatever but that Martin M'Mahon was barbarously murdered, and the only question is, whether you are satisfied beyond a reasonable doubt with the testimony of the four witnesses, who all undertake to identify him. The first witness states that he saw him, that he remained some time in the room to make an observation of him, so as to be able now to identify him. Michael M'Mahon confirms his testimony. He was disabled by a blow from rendering assistance, but through the window, he says, he saw the entire transaction, and undertakes positively to identify the prisoner, notwithstanding his face was blackened. He met the police with the prisoner in custody. He was taken crossing a ditch coming from the direction of M'Mahon's house, and a broken gun was found in his possession; and you recollect that one of the witnesses told you that he smashed a gun with a blow of a shovel, and that broken gun is found with him under circumstances of strong suspicion. These are strong corroborative facts, when the question is, whether the witnesses made a mistake. The boy also identifies the prisoner. All the witnesses had previous knowledge of him, and all say they are able, notwithstanding his disguise, to know him, which is corroborated by the resistance he made to being arrested. If, however, notwithstanding this evidence, a reasonable doubt remains on your minds, you will give the prisoner the benefit of it.

The jury, without leaving the box, found a verdict of Guilty.

The Attorney engaged for Patrick Gueran, John Griffin and Charles Healy, who had been also arraigned for the murder of Martin M'Mahon, applied to withdraw the plea of not guilty, and to plead guilty.

CHIEF JUSTICE.—Let the pleas of not guilty be withdrawn, and pleas of guilty entered.

The Grand Jury having come into Court—

Sir Lucius O'Brien, Bart. (foreman), asked if there was any more business to be sent before them?

The *Clerk of the Crown* having replied in the negative—

The *Attorney-General* requested that his Lordship would not discharge the jury at present, as the Government proposed adjourning the Commission.

CHIEF JUSTICE.—Gentlemen, I was aware of what you have heard from the *Attorney-General*, and regret it is not in my power to discharge you altogether. I am enabled, however, to let you separate for the present, and you shall have notice when your services are again required.

The Jury then retired.

Same day—half-past twelve o'clock.

TRIAL OF MICHAEL M'MAHON,

FOR A CONSPIRACY TO MURDER MATTHEW BOLAND.

Michael M'Mahon was then placed at the bar.

The panel being called over, the prisoner challenged sixteen peremptorily. The following jury were then sworn :—

James Blake Butler.

David John Wilson.

John Blood.

Matthew Canny.

James O'Dwyer.

John B. Knox.

John Macbeth.

Ralph Cullinan.

Pierce Creagh.

Francis Hoegrave.

George Lysaght.

John O'Kelly.

The prisoner was then given in charge on two indictments. The first indictment charged that he, with two other persons, John M'Mahon and Michael Shanahan, did, on the 29th of November 1847, at Claremount in the county of Clare, feloniously, &c., solicit, encourage, and endeavour to persuade John Perry to kill and murder one Matthew Boland.

The second indictment charged that he and John M'Mahon and Michael Shanahan, together with other evil-disposed persons to the jurors unknown, did, on the 3rd of December 1847, feloniously, &c., conspire, combine, confederate, and agree together, to kill and murder one Matthew Boland.

The second count set forth as an overt act, that the said persons, in pursuance of such conspiracy, &c., did solicit John Perry to shoot the said Matthew Boland; and in the third count, that they did solicit one Michael Harkins and Michael Morony to subscribe to a fund for the purpose of hiring some person to shoot the said Matthew Boland.

The *Attorney-General* stated the case for the Crown.

Gentlemen of the Jury, the prisoner at the bar stands charged with an offence of as heinous a nature as could well be conceived; it is that of entering into a conspiracy with others for the purpose of depriving an unoffending man of his life. Fortunately the object of that conspiracy has not been achieved. Fortunately his life has not

been taken. I have thought it my duty, in order to further the ends of justice, to avail myself of the evidence of one of the guilty accomplices of the prisoner. In order to bring forward a case against him, I will produce before you the man he actually had hired to commit the assassination, and he will state to you that he would have done the act were it not that the prisoner at the bar had not the money ready to pay him for this vile purpose. I mention this matter in order, if possible, to open the eyes of the misguided people to the danger they incur, and to warn them, if any thing could be a warning to them, of the risk they daily expose themselves to in placing their lives in the hands of such miscreants: of course such evidence would not be sufficient to justify you in finding a verdict of guilty, but in addition to his evidence several witnesses will be produced to you, who fortunately had courage and determination enough to resist the efforts made to induce them to join in the crime; they refused to take part in it, and on the contrary took every precaution to prevent the accomplishment of this dreadful deed. Matthew Boland, the man who was marked out for assassination, was a farmer in good circumstances, and the prisoner at the bar, and those persons who were united in the conspiracy with him, had taken it into their heads, if they could get rid of him, they would have an opportunity of getting possession of the land of which he was in occupation; and so great was the hardihood of the prisoner, that he went about soliciting money in order to raise a fund for the purpose of getting rid of Boland. The only difficulty that suggests itself to me in this case is, how it is possible that any human being could have had the foolhardihood of acting in the manner in which the prisoner has done. We will, however, produce witnesses to you, persons whom he had endeavoured to induce to join him in the object of that conspiracy, and who will clearly prove his guilt.

FIRST WITNESS.

John Perry sworn.—Examined by the *Solicitor-General*.

I live in the county of Clare. I know the prisoner, Michael M'Mahon.—[Witness identified the prisoner.]—He lives about six miles distance from me. I remember his coming to my house about the end of last November. He came to my house in or about four o'clock in the afternoon. I had known him before. I had known him since I was able to know any person. He did not go into the house. I was coming out of my own house, and he met me at the end of it; he offered me five pounds if I would shoot Matthew Boland. Nothing else passed between us but this, and he asked me how I was;

I returned the salute. He then offered me five pounds if I would shoot Mat Boland. I know Mat Boland; he lives nearer to the prisoner than he does to me. Boland's house is not a mile from where the prisoner lives. Boland lives nearer to Broadford than the prisoner. What did you say when he asked you?—I told him I would. This conversation took place at the end of my own house. Did he say any thing about the time it should be done?—He told me the third evening following. I went to the prisoner's house that evening. I am not sure it was the prisoner's own house, but it was the house where he told me to meet him. I tapped at the door, and he came out to me. The house is near the cross going to Broadford. I asked him then for the money, and he told me it was in sure hands as soon as I would shoot Mr. Boland. He told me I was to meet Mr. Boland between the lodging-house he stopped in and the mill. I don't know what mill it is; it is near Callaghan's mill. I had a pistol of my own, a thing of no use. I promised to shoot him for the five pounds. Would you have done it if you got the five pounds?—No, I would not: I never done the like. I would not be able to do it. I came back the following Monday night. I wanted to go to Boland for the purpose of telling him about it, but found he had gone to Limerick with Father Quaid. I then doubled back towards home, and I met Constable Hogan coming out of Broadford, and told him Boland and O'Brien were to be shot. That was the Monday evening following. On the 29th of November I had promised to shoot Boland. I don't know what day of the week it was. I met Hogan about a mile from the street of Broadford. I went back with him to my own house, and afterwards went before the magistrates, and made my information.

Cross-examined by Mr. *O'Hea*.

Do you think there is a greater villain in the county of Clare than yourself?—I don't know. Would you swear there is a greater villain in Clare?—I cannot say. I could not know why the prisoner thought I would shoot a man. I came from the parish of Doonass. I was born in O'Callaghan's mills. Were you ever in the county of Tipperary?—I went there of a message. Was it of a shooting message?—No, it was not. "Good morrow, Terry," said he; "Good morrow kindly," said you; "Will you shoot Mat Boland," said he; "I will," says you; was that the conversation?—It was. You went to get the five pounds?—I did. As you did not get it you went away?—I did. You had an old pistol?—It was no good. What did you take it out for?—I did not take it out. Do you swear you did not take it out

that day?—Oh! I did that day. I thought you meant the first day. How many pistols had you?—I only took one; I had but one pistol, the lock of it was bad, it would not go off. I suppose the lock had a bad click?—I don't know.

Mr. *O'Hea* then read the information made by the witness on the 20th of December 1847, which was as follows:—

“That on this day three weeks, the 29th of November last, Michael M'Mahon of Claremount came to my house and asked me to come to O'Callaghan's mills to shoot Mr. Matthew Boland, and that I should receive five pounds for doing so on the Thursday following. I came to Claremount to the house of Michael M'Mahon; on rapping at the door, Michael M'Mahon came out and walked with me to the road, and sent for John M'Mahon and Michael Shanahan, both of Claremount aforesaid, who all conspired to shoot said Matthew Boland, and solicited me to do so. I was armed with a case of pistols, but did not attempt to shoot said Matthew Boland, as they had not the money they promised me—namely, the five pounds before mentioned.”

How many pistols had you? Which story is true?—I had two pistols. Where did you get the two?—They were of no use. I never was in the habit of using them. Did you ever load them?—No; I never had a bullet in them. I never was in the habit of using the like. Did you hear the Judges were coming to the county of Clare?—I did. Was it then you came forward to prosecute?—It was. Were you to get money for the prosecution?—No; I never expected any thing. Which do you think it worse to hang a man than to shoot a man?—I would do neither.

To a *Juror*.—Where did you get the pistols?—I got them in November last from a man named Kennedy, who went to America. What did you do with them?—I threw them into the lake.

SECOND WITNESS.

John Morony sworn.—Examined by Mr. *Bennett*.

I know the prisoner.—[Witness identified him.]—I know him since he was a child. I know Matthew Boland; he is a farmer, living in the county of Clare. I know him to have two or three farms. I have a son-in-law, Michael Hynes. Hynes had been in possession of one of Boland's farms, and was put out of it about three years since. The prisoner has a house and a rood of land. I saw him mowing in last August. He was on the other side of my bounds at Iragh. I was going along the pathway and we commenced a conversation in Irish.

He told me he wondered I was so dead a man to allow any person to hold the farm my daughter had. I told him I lost what I had by that farm; that was the farm of Killavoy; Hynes had it; I gave it to him as a portion with my daughter. I took half that farm from Hynes for some years to assist him; he was broke down. I said to him, "The back of my hand to it; the seldomer I see it the better I like it. I wish there was a lake in place of it." The conversation then dropped.—[The witness was then directed to repeat the conversation in Irish, and a Juror stated the substance of the conversation was, that the prisoner said that witness was a weak man, having so many friends in the neighbourhood, to allow a stranger to hold the farm.]

Examination resumed.

I am out of it these three or four years. Mr. Gore the landlord interfered, and we gave it up to him. Mr. Joseph Gore kept it for some years himself; after his death Mr. O'Leary gave it to Matthew Boland in May last. I think he got the whole farm.

Cross-examined by Mr. *O'Hea*.

Did you pay the rent regularly?—If I was left it I would. Were you ejected?—I was. You would not get it again?—No. Did you ever say it was too much for one man to have three farms?—I did not. I said I would rather a lake of water was over it. I did not care about it. The prisoner had no chance of getting the farm. Did you ever hear of men who were turned out of land wishing the man who got it to get a beating?—I did; but that was not my case. The Sheriff put out my son-in-law. I know Michael Harkins; he is no friend of mine no more than any other neighbour. He never wrote a notice for me. He knows how to write, so do I. The prisoner is a poor man with a family.

THIRD WITNESS.

Michael Harkins sworn.—Examined by Mr. *Plunket*.

I know Matthew Boland. He lately got possession of the farm Hynes held. I know the prisoner.—[Witness identified him.]—In November last the prisoner spoke to me about Boland. The prisoner used often to come in to me. Boland and I were not on great terms, although there was nothing to cause us to have a falling out. I know the prisoner these twenty years. I had a conversation with him about eight weeks before I gave my information. He took an advantage of my brother-in-law Shanahan to have an opportunity of speaking to

me unknown to him. He said a deal to me. He gave me a hint a few times. He told me there was a conspiracy made, and that there was some money to be made up by a few persons, and it was not to be done without nine pounds. He said it would not be done without nine pounds for the party intended for shooting the person. What person?—The person that was intended as a bad member; something that way. He did not name the person to whom the nine pounds was to be given. He said it was to be given to a party, and that he was a messenger between the conspirators and the party who was to be employed. He told me Boland was the person that was to be shot. He said Boland was the first man who prevented workmen getting their diet. He said that Boland was taking farms and keeping them stocked, and if the people got them they would, of course, be better off. He said that the nine pounds was not all made up. He said that some of them was promising, but they did not get it. He did not say that any of it had been paid. He desired me to go to Michael Morony to know if he would subscribe to the fund. When he asked me I told him I would. Did you go to Morony?—I did not go at that time. I told him I went, but I did not go at all. Did he speak about a man named Driscoll?—He did. He spoke to me about Driscoll before he spoke to me about Morony.

CHIEF JUSTICE, to Mr. *Plunket*.—Is there any overt act about Driscoll?

The *Clerk of the Crown*.—There is nothing in the indictment about Driscoll.

Mr. *Plunket*.—There is a general count for a conspiracy.

CHIEF JUSTICE.—You are entitled to go on.

Examination resumed.

He told me two or three times that Driscoll was to pay part of the money. He was for a fortnight talking to me about this conspiracy. I was getting in dread of God and man, and I had heard the charge of my pastor not to have any thing to do with conspiracies, and not to join in any bad or improper business. I went and told my pastor and I then got out of it. At the first commencement I thought nothing of it; but when it was going to the depth of the business I was afraid. Did you tell Morony what the prisoner desired you to say?

Mr. *O'Hea* objected to any conversation between witness and Morony being given in evidence.

CHIEF JUSTICE, to the witness.—What message did he tell you to deliver to Morony?—He told me to ask Morony would he subscribe to the nine pounds. I delivered that message to Morony. While I was talking to Morony the prisoner passed down the road.

Mr. *Plunket*, to the CHIEF JUSTICE.—The indictment is, that the prisoner and several others did solicit Michael Harkins and Michael Morony to subscribe a fund for the purpose of hiring some person to shoot Boland; and we wished to make the witness an agent for that particular thing.

CHIEF JUSTICE.—You can go no farther with this examination.

Cross-examined by Mr. *O'Hea*.

Are you a secretary; was there tenant-right in your secretaryship?—I do not understand you. Can you write?—I can, very badly. Do you know what a secretary is?—I partly guess. Did you ever, as secretary to a meeting, draw up a resolution?—Never, that there was any treason in. Did you ever draw up a resolution, that fixity of tenure means fixing a bayonet in the body of a landlord?—No. Did you ever post a notice, and bring a thousand men to hold a meeting on Clonerkin Hill?—No. Did you refuse the money when he told you they were going to shoot Mat Boland?—He did not ask me for it, I could hardly pay. Why did he come to you, when he got no money from you?—I do not know any other reason, except he thought I would not begrudge Mat Boland's downfall. Boland and I used not to speak. We had no quarrel. Had he an oddity of a form with Morony?—I do not know if it was not an oddity of a form. We used not to speak. I considered him to be wrong. Boland was a committee man on the Board of Works?—He was. Did he put you off the work?—No; I was not on it. Did you apply for work?—I did, and was refused. M'Mahon got work, and you were refused?—M'Mahon wanted it more than I did. It was before that our acquaintance dropped. I do not know why. I had no quarrel with my parish priest. Do you remember the time of the Terry-Alts?—I do. Did you see the Terrys on Clonerkin Hill?—I did, but I was not there. I never wrote a notice calling them together.

To the CHIEF BARON.—Michael Shanahan lives in a small house belonging to me.

FOURTH WITNESS.

James Driscoll sworn.—Examined by the *Attorney-General*.

I live at Dromeen. I know Michael M'Mahon the prisoner.—[Witness identified him.]—He lives at Claremount, about a mile from me. He came to me in the month of November, and he asked me for subscription money. He did not say how much, but he said it was for getting Mat Boland shot. He said that Boland would not diet his men, and that he refused to give the prisoner employment. Did he go to you more than once?—No, but he met me again on the road. He did not ask me again for money; but he said, if my landlord had a farm of land to let to-morrow, that Boland would take it from him. He asked me to apply to James M'Inerney for a subscription. M'Inerney is my brother-in-law. For what purpose was that subscription intended?—For shooting Mat Boland. He said that Pat M'Mahon of Iragh and Mick Morony were to subscribe. I know Hynes. He is married to a daughter of John Morony's. Michael Morony is John Morony's brother. He said he would apply to M'Mahon and Morony, if they would subscribe. I requested of him for God's sake to drop that wicked business; and he said, "I believe it is as good." I refused to subscribe.

Cross-examined by Mr. *O'Hea*.

Michael Morony is son of John Morony?—John Morony's wife is my first cousin. John Morony was broke, I believe, in the farm that Hynes had. Were you looking for that farm?—Not for the last year, but I was looking for it about four years ago. Mat Boland got it in place of me. The priest would not certify for you, is not that the reason?—I believe it is. The priest came into Ennis to see and get it for me about four years ago. The priest got it for Boland. Did you ever say Boland ought to get a bullet through his body for taking so many farms?—I said no such thing; I said nothing about any such thing. I had not the least umbrage to Boland. There were a good many looking for it. I would have been glad to get it myself, but I would not wish to kill him for it. Could the prisoner have gained any thing by Boland's death? would he get the farm?—I think not. Would you take the farm now if Boland was dead?—I would if I got it for the value.

To a *Juror*.—I do not know how much land I have, but I pay forty-three pounds a-year rent.

FIFTH WITNESS.

Matthew Boland sworn.—Examined by the *Solicitor-General*.

I know the prisoner very well, he lives in my immediate neighbourhood. I have got possession of the farm that Hynes held. I do not recollect that I had any conversation with the prisoner about the farm.

The case for the Crown then closed.

Mr. *O'Hea*, for the prisoner.

Gentlemen of the Jury, the prisoner at the bar is indicted on a capital charge, of which, if convicted, his life will be in danger. But what is the evidence to sustain such an indictment? and what is the nature of that evidence? The first witness produced was an approver; a man so little worthy of belief as to the story he told, I never before heard. Although a bad man, he might have told a story which might have been supported by other evidence. But there was no single witness produced to corroborate his testimony in any way. You heard his story of both the pistols; you see the time he comes forward, just on the eve of this Special Commission—would you on such testimony as that take away the life of any man? It is needless to say any thing further respecting him, for their Lordships will tell you, that being an approver, his testimony ought to be corroborated, and not being so, you ought not to give any credence to what he says.

Then, with respect to the conspiracy. Can you believe the evidence? Can you suppose that any man would be so foolish as to go about the country soliciting money in the manner the witnesses described the prisoner to have done? What object had he in it? He had nothing to gain by the conspiracy, no passions to gratify; but others may have had an object. John Morony had been the tenant to the lands, he had been ejected from the farm, and rejected. He may have had a desire to seek for satisfaction against the person who succeeded him, but the prisoner at the bar could have had no object whatever. He had no advantage to gain by the death of the man who employed him. Harkins tells you that the prisoner was fool enough to go tell him, but that he would not tell him in the presence of his own brother-in-law; and he tells you that he was telling him for about a fortnight, and he does not go to the magistrate until a month afterwards, and then he tells you he tells his story as a relief to his afflicted conscience; and yet he never told the man whose life was said to be in danger. But then it may be said, what object could

they have in charging the prisoner at the bar? But have you not had a specimen of the witness who was produced, ready to commit murder for any one who employed him? And suppose that a rumour had gone abroad, that certain parties had formed a conspiracy for the purpose of committing murder, and that for the purpose of getting themselves out of the scrape, on the eve of a Special Commission, they might procure the arrest of the prisoner; is not that a stronger motive than any you could possibly assign to the prisoner, who could have no interest whatever in killing Boland? Suppose John Morony was on trial, instead of the prisoner at the bar, and that the prisoner came forward and swore that Morony asked him to get some person to do this job, would not that be a more likely story? Do you suppose that the secretary to the Terrys, who saw thousands of them assembled together, would not be skilful enough to change the venue, and put the saddle on another horse?

The prisoner, gentlemen, can have no defence except the improbability of the story: he has no means of proving his innocence; he can only rely on the improbability of the case, and you will consider and investigate the motives and objects which may have instigated those persons to come forward against him: he had nothing to gain by it, and yet, according to these witnesses, he is the source and fountain of this conspiracy.

Gentlemen, it will be for you to say, taking all those circumstances into consideration, whether you are satisfied with the case which has been made, and whether it is one on which the life of the prisoner ought to be forfeited.

CHIEF JUSTICE, to the *Solicitor-General*.—The indictment charges that the prisoner and two other persons conspired with persons unknown to commit this offence; you have not proved that.

The *Solicitor-General*.—If there be evidence to sustain a conspiracy with persons unknown, we are entitled to have a conviction on this indictment directed for us.

CHIEF JUSTICE.—Yes, if you had stated that the conspiracy was with persons unknown: but you specified a conspiracy with persons whom you have named.

The *Attorney-General*.—It has been recently decided that if four

conspire with several unknown, some of them may be acquitted ; it is not material to name all.

The *Solicitor-General* then addressed the jury.

Gentlemen of the Jury, the prisoner at the bar is charged upon two indictments ; in one for having conspired with a number of persons unknown, to procure the assassination of Mr. Boland, and the other indictment charges him with having hired Perry to kill and murder Boland. What a scene does this present trial disclose ! I trust that the curtain will soon drop upon scenes such as this, because I think we have established indisputable evidence that a band of persons had associated themselves together for the purpose of carrying out the principle of their law by the assassination not only of the landlord but of the tenant who dared to disobey them. I trust that this conspiracy has been broken up, and that there is dawning something like a gleam of hope that it will be put an end to, when we have two or three respectable witnesses coming forward to give evidence, who hitherto forebore, from terror and apprehension. It does appear that one of the witnesses was induced to abandon it in consequence of the exhortations of the clergyman who administered the affairs of his parish ; for Harkins tells you he was induced to depart from it, from the admonitions which he had heard from his priest, and the consequences which would follow to those who were engaged in these practices : I therefore say, this trial is of importance. It will be all-important in its results. One can hardly conceive how a man of this description could have entered into such a conspiracy, going about the country in that reckless manner, soliciting contributions. You cannot account for it except through a total disregard of public justice. What is the evidence you had then before you ? The first witness is Perry, the approver : admitting him to be a most profligate man, believing him to be so, you will ask yourselves did not the prisoner ask him to commit this assassination ? is he not corroborated by Harkins, if you believe him ? for he told you that the prisoner stated to him that a person was to be employed for the purpose of committing this assassination, and that he, the prisoner, was a messenger between the conspirators and the person who was to get the money. You have it therefore proved, that a person was to be employed to commit a murder. Is it, therefore, incredible to suppose that Perry was that very person ? Then as to the evidence of the conspiracy, there is no question that the farm which had been in the possession of Hynes had come into Boland's possession, and the prisoner wanted

to assert that principle, that no tenant should presume to take land without the consent of the parties engaged in this conspiracy. Morony tells you, that his son-in-law was unfortunate in that farm, and that he had been evicted from it. It is for you to say whether he had an object in coming forward, or that he was actuated by a vile and corrupt motive of charging an innocent man. If then he be a credible witness, we have the prisoner remonstrating with him as a man of weak spirit, for allowing Boland to hold the farm. I see no reason to suppose he came forward to make a false statement. I trust that men in his rank will continue to come forward and give testimony to the facts which are disgracing your country. Then we have Harkins coming forward and acting under a sense of his duty, and he tells you that the prisoner applied to him for a subscription to make up a sum of nine pounds. He, the emissary of this banditti, without any personal motive, solicits a subscription from the witness for the purpose of assassinating a person in his own rank of life. Have you any reason to disbelieve Harkins? Does he not corroborate the testimony of Perry? Gentlemen, is it not appalling to think that men should be so reckless of their own lives as to give money for the purpose of hiring an assassin? It will be for you to say whether this dreadful secret society did exist: it is frightful to imagine the existence of such a crime.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, it is necessary that I should call your attention to the form of the indictment in this case. One indictment^s is in substance this:—That Michael M'Mahon, the prisoner at the bar, did conspire with two other persons therein named, and others unknown, to kill and murder one Matthew Boland; and it then states the overt act, the meaning of which is, that certain acts had been done to effectuate the object of the conspiracy. The other indictment is, that Michael M'Mahon, and two other persons therein named, did solicit, encourage and persuade one John Perry to kill and murder Matthew Boland. This states that solicitations were made by three persons; but it will be sufficient to inculcate the prisoner if you are satisfied that those solicitations were made by him. The witness in support of that last indictment is John Perry. It is plain that he comes forward in a character so dubious as to justify me in saying he ought not to be believed unless substantially corroborated. Unfortunately, I must say, the evidence presents a state of facts, that in another

country, at another time, would be almost incredible ; but I am sorry to say, that murder has become so common, and conspiracies so frequent, that wherever a murder is effected there exists a conspiracy more or less ramified, more or less involving a large portion of the population.—[His Lordship here recapitulated the evidence of Perry.]—Now, there can be no doubt with respect to his evidence, if you believe it, that he was directly solicited to murder Boland. Your own good sense will tell you with what delicacy such evidence should be received ; and I must also tell you that unless corroborated by other evidence you ought not to act on it. The Counsel for the Crown, however, contend that he has been substantially corroborated, and also that there is substantive evidence of the existence of the conspiracy to effectuate this terrible purpose. It will be for you to say what conclusion you will draw from his evidence. It will be for you to say whether you are satisfied there does exist a conspiracy between the prisoner and others to take away the life of Boland ; because if such a conspiracy existed it would fully corroborate the testimony of Perry, which goes entirely to prove the extent of that conspiracy. John Morony was examined for that purpose, and his evidence renders it extremely probable that, from the language and demeanour of the prisoner, a notion prevailed in his mind that a conspiracy to that extent actually existed.—[His Lordship read the evidence of Morony.]—Why the prisoner should meddle in these matters, at another time, would be extraordinary and almost unaccountable. But unfortunately the fact is so, that persons are found to be the instruments of others, having no interest themselves in the matter ; and you have him telling John Morony that he had a friend, manifestly intimating the interference of this friend, who would be procured. Then you have the evidence of Harkins : his evidence is of the utmost value, if you believe it ; it can scarcely bear any other interpretation than this : that the prisoner was an emissary of a conspiracy to take away human life, and to collect funds for the purposes of assassination.—[His Lordship here read the evidence of Harkins.]—If you believe his evidence it establishes the charge of conspiracy, not as a matter of fact otherwise than it concerns the acts of the prisoner himself, for he is confessedly the messenger and agent to carry out the object of that conspiracy. I do not mean to say that there is evidence to that effect, because you are to put your own construction upon the evidence. If you conscientiously differ in opinion from me, you ought not to put that construction upon it.

I have now laid the evidence before you, and I have explained the

nature of the two indictments. The first indictment will be supported if you believe that the evidence of Perry has been corroborated ; and the second will be supported if you believe that the evidence proves, as against the prisoner, the existence of a conspiracy, one of the objects of which was the murder of Mr. Boland.

At a quarter past three o'clock the jury retired, and in a quarter of an hour returned into Court, with a verdict of Guilty on the indictment for a conspiracy, and Not Guilty of the soliciting.

Same day—half-past three o'clock.

TRIAL OF MICHAEL KENNEDY AND SIX OTHERS,

FOR CARRYING AWAY ARMS AND ASSAULTING AN HABITATION.

Same Jury.

Michael Kennedy, Michael Murphy, Denis Kennedy, Thomas Hogan, Daniel M'Namara, John Slattery and John Rochford, were given in charge on an indictment that they, on the 25th of September 1847, at Ballyboy in the county of Clare, did unlawfully and maliciously assault the dwelling-house of Thomas Hennessy.

The second count charged that they did unlawfully carry away a gun, the property of Thomas Hennessy.

FIRST WITNESS.

Thomas Hennessy sworn.—Examined by the *Attorney-General*.

I am the son of Michael Hennessy. I lived with him at Ballyboy in the county of Clare. I was in the house the night a party came to the house. It was on the 25th of September, or the morning of the 26th. My father, a servant boy named John Barry, myself, and the family were in the house. I was in bed at the time. I was awoken by the bolt of the kitchen door being broken. Three men came into the room. I slept in the room behind the fire-place. They made a blow at me with the butt of a gun, which struck my wife and part of the bed. They were armed with three guns and a pistol. I asked if they intended murder; they then made another stroke, and put the gun through the camp bed. I then took hold of the gun, and took the man who had it by the arm; his name was Michael Murphy.—[Witness identified the prisoner Michael Murphy as the man who had the gun.]—He was the first man who came into the room.—[Witness identified the prisoners John Slattery and Daniel M'Namara as the other two men who came into his room.]—I took hold of that gun, and Slattery commenced beating me with the butt-end of a gun. He demanded where the gun was, and I told him I had it not, that it was at my uncle's. This occurred when I was up in the room. They remained from fifteen to twenty minutes. They beat me then. Slattery broke a pistol on my head. They then brought me outside the room

door. I had no clothes on, and I wanted to put some clothes on. They forced me to go with them to my uncle's. They wanted the shot-pouch and powder-horn. I did not give it to them. I told them to let some of them go to my uncle's house, and for others to remain, and that they would find me true, or to let me put on my clothes, and I would go with them. They were putting me outside the door at this time. They put me out in the street, and I stopped there four or five minutes without my clothes. There was another man in the kitchen besides those three, and one of them said "That was enough." I heard but one man in the kitchen along with the other three. He said, while they were in the act of beating me in my own room, "That was enough." I heard a noise in my father's room as if beating my father. He told me he got but two strokes, one on the jaw, another in the ribs. He is about seventy years old. When I was going out of the room I snatched up an old shift. I was forced out against my will. We remained outside the door in the street about four or five minutes. My uncle's house is about three hundred perches from my house. When I was in the yard I knew Thomas Hogan.—[Witness identified the prisoner Thomas Hogan.]—There was another with him who is not a prisoner. There was two men outside the door; one of them is not here; the other man is Rochford.—[Witness could not identify Rochford.]—I saw in the room Murphy, M'Namara, and Slattery. I saw Thomas Hogan in the street. As soon as I came out, Hogan made off towards his own house. I did not see any of the other men. Michael Kennedy was on the watch, about twenty or twenty-five perches from the house. He did not join the party on the way to my uncle's house. I am certain he was on the watch while the others were attacking the house. His brother was about forty perches from the house, with his head to the wall. They put me on the road; and one of the party asked him who he was, and one of them, I think it was Slattery, said, he was one of their men. Daniel Kennedy said nothing; he was about fifteen yards from us at the time. Daniel Kennedy then went inside the wall, and lay there until we passed by. On your way to your uncle's did you meet any other person?—Rochford came up, but I cannot identify him. They brought me to my uncle's house. They were prodding me with a gun to hasten me. Murphy, M'Namara, Slattery, and Rochford came with me. Slattery, when we were near my uncle's, said I knew him, and he desired Rochford to stand out of the way until he would shoot me. M'Namara said he would allow no murder to be done, and put his hand on my shoulder to protect me. I told them

they might as well shoot me as the punishment I was getting. When I got near the house, M'Namara and Murphy turned on one side, and Slattery and Rochford came with me to the house. Slattery threw me against some thorns. When we got to the house I called for the gun. My uncle opened the door, and I asked for the gun, and his son handed out the gun to Slattery and Rochford. I am not quite sure the prisoner Rochford is the man. Rochford lived within two miles of me. They took hold of the gun and began to fight for it. One said to the other, "You had a gun before." They took away the gun. One of them fired a shot. I went into my uncle's house. All the arms I saw was three guns and a pistol. It was Slattery gave me the entire beating. I got besides only one blow that Murphy gave me. Slattery lived within two miles of me. Their faces were not blackened. They had whiskey taken. M'Namara, Murphy, Slattery, and Rochford lived in the same village. The Kennedys and Hogan lived in the same village with myself. It was a moonlight night. I had nothing on me but the old shift I brought with me. I am quite positive of those men.

Cross-examined by Mr. *O'Hea*.

Are you a great pet with the magistrates and the police?—I cannot say that I am. Where have you been since the outrage was committed?—I was part of the time in the infirmary, part of the time at home, and part of the time in the barrack for the protection of my life. I was eight days in the infirmary. I was but a few days at home. Were you a week at home?—I was in or about one fortnight. I intended to get my gun, and went to one of the prisoners, and told him I knew the party, and that if I did not get my gun, I would put him in its place. I gave him eight days to get it back. Did you put him in the place of it?—Not at that time. Were you afraid?—Not at that time. I might be so from the state of the country. Were you sure of all these men from the commencement?—I was. You never doubted Rochford from the commencement until this day?—I did not. I am now certain it is he. I think it is he. Have you any doubt of him?—I have not a doubt. Why did you swear you had?—I was not altogether sure. What cleared up the doubt?—He is nearer to me now than he was at that time. Why did you say you had a doubt?—Because I did not like to do any thing I was not perfectly sure of. I know Margaret Keshan. She is a cousin of mine. She spoke to me about Rochford. She said Rochford was in the house with her until four o'clock in the morning. Will you swear to him

now?—I will now. Was it true when you said you were not sure of him?—It was true. And now you are sure?—I am. Was that true?—It was not. I had a doubt on my mind. Did you swear against Tom Kennedy?—I put him in my information; but if I was not sure, I would not swear to him.

Mr. *O'Hea* here read the information made by the witness, in which he stated Thomas Kennedy was one of the party.

I told Mr. Leyne I was in doubt of one of the men. I told him I could not swear against Thomas Kennedy. I told him I was not sure of him. Yet Captain Léyne put him in the information?—He did. There was but two of them close to the door. Flanagan and Hogan were there. Did you tell Mr. Leyne about the man threatening to shoot you?—I cannot say whether I did or not. It was the case. I would have been shot only for M'Namara. Did you say any other persons attacked you?—I heard there were more of the party. Did you state others attacked you?—I do not know whether I did or not. John Fitzgerald told me a few nights before to sell the gun for whatever I would get for it. I told Fitzgerald I heard there was other persons in it, that there was twenty-one persons out that night. I saw only nine of them. Did you think Tom Kennedy was one of them?—I could not say he was with them. I heard he was out that night. I thought he was one of them, but I still have a doubt on my mind. Were you ever charged with any offence?—Never. You were not in good health for some time back?—I was not. Was your head astray?—No. Were you out of your mind during the last two years?—No.

CHIEF BARON.—Was your wife struck?—She only received part of the blow; the bed received part. The second blow smashed the board of the bed.

Mr. *O'Hea*.—Did you hear of a reward of £50?—I did. Was that out before your information was sworn?—It was. But I told it before. The day before I swore my information I read of the reward. I met constable Creagh, and he asked me would I follow up what I told constable Meredith. I told Meredith the next morning after the offence. I told them all to him, but the three others I did not know, and that if he took Kennedy the others would make off.

To a *Juror*.—My father holds twelve acres of land.

SECOND WITNESS.

Michael Hennessy sworn.—Examined by Mr. *Bennett*.

I am father to the last witness. I live in the same house with him. I was in the house the night it was attacked. I saw two men in my own room. They beat me. When they broke in the street door, I demanded who it was and got no answer. One of them broke my door and asked me was there any fire-arms. I said I did not know. He then came and struck me a blow on the jaw and rib. I cried out "mercy," and I got no more from them. I could not tell who they were. The next day when speaking to my son, I said, "You must know who were there," and he said, "Hold your tongue, I have them caught."

Cross-examined by Mr. *O'Hea*.

Did not Hogan come out of his house to protect you?—He did in a couple of hours. Was he not sent for to protect you?—I do not know that. Was your daughter-in-law in the house that night?—She was. Who did she send for Hogan?—She sent no person; but when she called John Fitzgerald to send for the police, he said to send for Hogan. Hogan came there two hours after. A servant boy named Barry, and Pat Hennessy, was in the small room with me.

THIRD WITNESS.

Patrick Ready sworn.—Examined by the *Solicitor-General*.

I know Thomas Hennessy's house. I live near it. I am a labourer. I remember the night Hennessy's house was attacked. I was outside my own house minding turnips. My house is less than a quarter of a mile from Hennessy's. I met the party going to attack the house of Considine, and I followed them, and on my way back I passed Hennessy's house. I saw one man come out of Hennessy's house and stand in the yard. That man was Tom Hogan.—[Witness identified the prisoner Hogan.]—That was the first man who came out of the house. This was after twelve o'clock. I was about seventeen or eighteen yards away at the time, when he came across the field facing towards his own house. It was as bright a night as came these twelve months. It was moonlight. Hogan lived next door to me. He passed near me on his way home. At this time I was standing inside the wall of Hennessy's field. When I was passing the house I heard a noise; I saw Tom Hennessy; he was bare naked. He had something white in his hand. They went down the road to the next cross facing his uncle's house. There was four men with Tom Hennessy.

I then went home. Had any of them arms?—They had. Three of them I am sure had arms. They had guns. Hogan had nothing in his hand.

Cross-examined by Mr. *O'Hea*.

I told Mr. Leyne I saw them. Have you a case of your own?—I have. Where was your own case?—In Cappagh, in Considine's house. How far is Considine's from Hennessy's?—It is about one and a-half or two miles. What took you to Considine's?—I was minding turnips, and I saw the party and followed them; and when I came back I saw Hogan come out of Hennessy's house. I did not wait until the party came out from Considine's. I remained a good distance from them. I stood behind a wall looking over it. I kept within fifty or sixty yards of them. The party had two guns. Was it the same party came back from Considine's to Hennessy's?—It was not, for I left the party in Considine's. You were three hours coming back?—I came quietly. How many men went to Considine's?—Five men. I went to the front of the house. I knew them, and I am to swear against them. I told Mr. Leyne of it before the Special Commission. I am in the police barrack since the 16th of November. I told Hennessy before I told Mr. Leyne. Hennessy told me nothing.

To the CHIEF BARON.—I saw four men come out of the house besides Hogan. I did not know any of them.

To Mr. *O'Hea*.—I came from Broadford. I am two or three years living in my present place. I am a labourer. Did you apply to Mr. Healy for work?—I did. Did you say if you did not get work you would not starve?—I did not.

To a *Juror*.—I was not one of the party. What made you follow them?—Seeing they were going to do mischief, I followed them. Who did you first tell you knew Hogan?—I told Tom Hennessy.

FOURTH WITNESS.

Constable *John Northeast* sworn.—Examined by Mr. *Plunket*.

I was stationed in Ennis in October last. I know John Slattery's house. I searched his house for him after the attack. I searched his house but once. I did not find him at home. I searched his house in the neighbourhood of Clare.

To Mr. *O'Hea*.—Slattery is a carman, and is in the habit of taking loads to Limerick.

FIFTH WITNESS.

Sub-constable *Michael Glynn* sworn.—Examined by Mr. *Plunket*.

I know the prisoner John Slattery. I arrested him on the 26th of October at Meelick, three miles from Limerick. I asked him his name, and he said it was John O'Dea, and supported that until he came to the barrack of Clare; his name was there recognised, and he then acknowledged to his name being John Slattery.

To Mr. *O'Hea*.—He told me his mother's name was O'Dea.

To Mr. *Plunket*.—I arrested him on suspicion of his being Slattery. I told him I had a suspicion he was Slattery. I asked him his name, and he said it was John O'Dea. I told him the charge I arrested him on. I told him that immediately after I arrested him. I told him I arrested him on suspicion of being one of a party who made an attack on Buncraggy.

Constable *Thomas Meredith* sworn.

Solicitor-General.—We tender this witness for cross-examination.

Mr. *O'Hea*.—Did Hennessy tell you there were twenty persons of the party?—No; I think he said only five. I am certain he mentioned five; he might have named six. He gave the Christian-names of three, and the surnames of three others.

To the *Attorney-General*.—That part of the country was disturbed at that time.

The case for the prosecution here closed.

Mr. *O'Hea* then addressed the jury.

Gentlemen of the Jury, the only question here is as to the identity of the persons who committed this outrage. Only one of the prisoners is affected by two witnesses; but the whole of the case is affected by the production of the second witness. What was Ready produced for? If Hennessy was to be relied on there could be no mistake. Ready makes no information. Is that right? You may fill the convict ship upon evidence such as that, but will that benefit the

country? What is his story? Watching his turnips, he meets a party, follows them, and marks them into a house, comes back and hits upon another party. Can you rely upon such a story as that? He makes no information. We have no means of ascertaining his life or character; but he comes suddenly upon us to add what he could to the testimony of the other witness. A savage outrage is committed; and do you suppose that lad, in the custody of the police, a Special Commission coming down, that that would not encourage him to come forward? If a man was telling the truth, he should come forward at once, that the party charged might know his accuser; but if Hennessy was to be relied on, what need had they of him; and if his evidence was considered necessary, why did he not make an information?

But what is the evidence of Hennessy? The policeman tells you he named five of them, but he does not tell you who the others are; and the man who makes a mistake as to one man, is not worthy of credit in a Court of Justice. You heard what he said of Rochford, and the reason he had for not identifying. Further he tells you that the magistrate inserted a name in the information, which he directed to be taken out. Is that credible? Is it to be believed that a magistrate would insert the name of a person into an information, which the witness states he is not sure of? Can you rely on him? Again, to-day he swears against two of the Kennedys; in his information he names three. If the prosecutor had died of the injury he suffered in consequence, and Kennedy had been arrested, and he had acknowledged his information, Kennedy might lose his life. That shows you the great importance of an information. As to the prisoner M'Namara, I am instructed we will be able to prove that he brought goods from Limerick on the very night in question; so that he could not have been present at the scene of the outrage. As to Hogan, we will be able to prove that he was sent for by the wife of this man to come and protect her.

John Fitzgerald sworn.—Examined by Mr. O'Hea.

I remember the night Hennessy's was attacked. I know Mrs. Hennessy. She called me from my bed that night. I live within two houses of her. She called on me to go for the police to Clare, and I refused to go. I went for Tom Hogan, and returned with him. Hogan came to the door in his shirt when I knocked at the window. I waited until he was dressed, and we then came back to Hennessy's house. Thomas Hennessy came into the house after we came there.

He made no charge against Hogan. Hennessy was put to bed. Hogan helped him to bed. The servant boy Barry was there also.

Cross-examined by the *Attorney-General*.

My house is within a hundred perches of Hennessy's house. I was in bed when Mrs. Hennessy came to me. Hogan's house is half a mile from my house. Hogan and I were in Hennessy's house before Hennessy came back. I did not see any of the party, nor did I hear them. We were three-quarters or half an hour in the house before Hennessy came back. He said he was very much beaten. Did Hennessy say to Hogan, "I may thank you for it?"—He did not. There was no light in Hogan's house when I went there. Hogan's was not the nearest house to me. Hogan is a second cousin of Hennessy's. Hogan and I remained in the house until it was clear day.

Michael Dillon sworn.—Examined by Mr. *O'Hea*.

I am a servant to Tom Hogan. I remember Tom Hogan being called up the night Hennessy was beat. I slept with Hogan that night. His father and mother were in another bed in the house. When he was called, he got up and went to the window, and he then put on his clothes and went away. He did not leave the bed that night before. He went to bed about ten o'clock.

Cross-examined by the *Solicitor-General*.

I slept with Tom Hogan. His father and mother slept in another bed, and the servant girl in another. I could not tell what time he was called up. I do not know how long he was in bed. I had been asleep. I was awake at the time he went to the window. Were you awake before Fitzgerald came?—I was. How long?—I do not know how long. How do you know that Hogan was asleep?—Because a man knocked at the door, and his mother asked who was there? and I called Hogan, and told him Fitzgerald was at the window. I was up when he came back.

John Barry sworn.—Examined by Mr. *O'Hea*.

I remember the time Hennessy was beat. I was a servant in the house at the time. I remember Mrs. Hennessy going out, and Hogan and Fitzgerald coming to the house, and putting him to bed.

John Magrath sworn.—Examined by Mr. *O'Hea*.

I keep a shop in Clare. I remember the 24th of September last. I

left Clare that night between eleven and twelve o'clock. That was the night before Hennessy was attacked. I went into Limerick that night. M'Namara and Brennan, two carmen, were with me. We left Limerick the next day closing four o'clock, and we reached Clare between four and five o'clock in the morning. That was on Saturday night, the 25th of September. The cars were heavily laden.

Cross-examined by Mr. *Plunket*.

We stopped at Bunratty. We got there about dusk. We reached Bunratty about seven o'clock. We stopped there an hour and a-half or two hours. M'Namara was with me. We did not stop after we left Bunratty. We did not stop at Newmarket. I bought flour and meal in several places through the city that day. M'Namara was often a carman with me before. We were driving all Saturday night, and we arrived on Sunday morning. I went to bed after the load was delivered, and I got up between first and second mass, when I heard of the house being attacked. M'Namara does not live in my house. He lives on the Commons of Clare. M'Namara did not leave me after we got to Clare, until we had refreshment.

Daniel Brennan sworn.—Examined by Mr. *O'Hea*.

I came from Limerick the day before Hennessy's house was attacked. I was driving a car that night. We left Limerick about four o'clock. M'Namara the prisoner was with me that night. The road was dry, but a deal of it was newly made. We stopped in Bunratty, and fed our horses there. We had a good load.

Cross-examined by the *Attorney-General*.

Daniel M'Namara was with me. He always goes with the horses. His brother is a carman. His name is Michael. He has a horse and car of his own. I often carried with him. Do you recollect driving with Magrath and M'Namara any night before that?—I do not know rightly. I often travelled with Magrath before. I often travelled with M'Namara, but I am not sure that Magrath was with us. We had two tons five hundred weight between us. We carried flour, soap, candles, and other things. All the flour was not bought in the same place. What I carried was bought at Quinlivan's store. We left Clare at twelve o'clock on Friday night, and we got into Limerick about seven o'clock the following morning. We did not put up our horses in the stable.

CHARGE.

The CHIEF JUSTICE.

Gentlemen of the Jury, the sole question in this case is, as to the identity of the prisoners. As to one of them, Rochford, he is not identified at all. The two Kennedys were not in the house, and were only seen by Hennessy after he was at some distance from his house; and when you consider the state that man was in at the time, I do not think you would be safe in relying on his identification. But then there remain Thomas Hogan, Michael Murphy, Daniel M'Namara, and John Slattery. With respect to Hogan, he was certainly sent for by Hennessy's wife. He came to the assistance of the family at once, and was at the house before Hennessy returned, and assisted in helping him to bed; but he is positively sworn to, both by Hennessy and Ready, as being one of the party. Now, there is no impossibility in Hogan's being there; and the question is, were both witnesses wilfully swearing what was not true. If you believe them, Hogan was one of the party. As to the other persons, Hennessy appears to have had a continued opportunity of identifying them. He says three had guns and one had a pistol, and he positively identifies Murphy, M'Namara, and Slattery. He, therefore, must be guilty of wilful perjury, if they be not the persons; for mistake is out of the question.—[His Lordship recapitulated the evidence of Hennessy.]

If the evidence given for the defence be true, all his story must be a perfect fiction: and it is for you to decide which you will give credit to.

The jury retired for a quarter of an hour, and returned with a verdict of Guilty against Murphy, Slattery and M'Namara, with a recommendation on behalf of M'Namara, and acquitting the other three.

SENTENCE.

The CHIEF JUSTICE then addressed them as follows:—

John Slattery, you have been convicted of a very serious offence; and the jury, by the discrimination which marks their verdict, have shown that it is entitled to the utmost weight and consideration which belongs to a case requiring a patient, calm and dispassionate consideration; for, perhaps, an outrage of a more barbarous character has scarcely ever occurred even in this disturbed county. Thomas Hennessy was known to be in the possession of a gun, and in order to possess themselves of that gun, a party consisting of nine persons, perhaps of twenty, all armed, attacked his house in the dead of night.

They drag him from his bed in a state of perfect nudity in order to procure those fire-arms. You acted with a greater degree of violence and barbarity than the other prisoners, and the sentence of the Court is, that you be transported for fourteen years; and let those who hear your case reflect on the enormity of your guilt: and I can only add, if a severer punishment had been inflicted, it would have been well merited.

Michael Murphy, you have been convicted of the same offence, but your conduct has not been marked with the same atrocity, and the Court, therefore, will pronounce upon you a more mitigated punishment. You are to be transported for seven years.

Daniel M'Namara, the jury have recommended you to mercy; and you having shown some degree of feeling towards this unfortunate man, and having regard to that and to the recommendation of the jury, the sentence of the Court is, that you be imprisoned for twelve months, with hard labour.

The Court adjourned at seven o'clock.

Wednesday, January 19.

Seventh Day.

SENTENCE ON JOHN CROWE FOR BEING ACCESSORY TO THE MURDER
OF MR. WATSON.

At half-past ten o'clock the Judges took their seats.

John Crowe was then placed at the bar.

The Clerk of the Crown having read the record of conviction, and asked the usual question, if he had any thing to say why sentence of death and execution should not be pronounced upon him according to law, he said—"I have to say that not one word of truth was sworn against me, but what I said about my cattle that were seized. As to the man who swore the money against me, I never saw him before. I hope your Lordship will give me a long day, and allow my body to be buried with my parents."

The CHIEF BARON then addressed the prisoner as follows:—

John Crowe, you have been found guilty of the crime of being accessory to the commission of murder; in other words you have been found guilty by the jury of having been instrumental in inducing the men who committed the murder of Mr. Watson to perpetrate that crime. We have now before us all the circumstances, from the first to the last, connected with this horrible transaction. It has been traced from the original plot in which the murder was planned down to the conviction—the proof of the guilt and the conviction of yourself, the last of four persons who are now under the last judgment of the law. Six persons have been charged with being in various ways concerned in this murder. With respect to two of them, who are in custody, but yet untried, I shall, of course, say nothing, because the law presumes them to be innocent until their guilt shall have been established, if ever it shall be. But of the persons who were engaged—concerned in various ways in the commission of that crime—it is well to point attention to the manner in which Providence has brought four of these to justice, and the circumstances connected with their participation in the crime for which they are now under the judgment of the law.

The murder was perpetrated by two men, who waylaid Mr. Watson.

One of these, William Ryan (Puck), is not here, because in another place he is under sentence—the last sentence of the law—for another murder. Another of them, Patrick Ryan, was tried and found guilty in this Court, and he is here under a similar sentence. Another of the party, James Hayes, who was near to the spot of the murder to assist its perpetrators, is found guilty of being one of the principals in the commission of the crime, and he is here under sentence of death. And now you, who are proved to have been one of those who were instrumental in inducing these infatuated men to commit this dreadful crime, are here to receive the sentence of the law, which dooms death as the penalty of murder. It was committed, I believe, on the 17th of May last. Eight months have not passed, and four of the party have been made amenable to justice, and their lives are now about to be forfeited to the law. I believe there seldom has been presented an example of more vigorous prosecution of the law in bringing felons to justice. The circumstances of the crime itself—the circumstances surrounding its perpetration, indicate a state of things in the district in which it was committed which it is awful to contemplate. It was perpetrated within a short distance of the residence of Mr. Watson. He was waylaid upon the public road, at a spot from which that public road extends a considerable distance—surrounded by an eminence, from every part of which the persons who committed the murder might have been seen in the act by any person travelling the road. There were several bye-ways near it; it was committed after breakfast hour, and on the open road on a summer's morning, when numbers of people must have been abroad upon their various occupations, and when opportunities must have existed of seeing the assassins. A number of persons assembled around the body immediately after the deed was done, and yet not a single effort was made to pursue or track the doers of the deed! They came and went apparently with little effort at concealment, and but that Providence raised up two boys who accidentally witnessed the transaction and were able to identify the parties, it might have remained up to this moment undetected.

Such a state of things indicates that these criminals must have relied upon the extensive operation of terror upon some, and of sympathy in others. It is the object of the administration of the law to oppose its terrors to that species of intimidation, and to encourage those who by that system of intimidation are now, perhaps, many of them paralyzed, to contribute their exertions to bring to justice such criminals as these. But it requires more; it requires the co-operation of others outside the walls of Courts of Justice, to accomplish the object

of putting an end to such dreadful outrages: and never was there an example from which a warning can be drawn more fully, and the necessity of such co-operation rendered more striking, than that which your unhappy case affords. You were a farmer—apparently a substantial farmer, with sixty acres of land, in May last well-stocked—carrying on at the same time the business of a shopkeeper, in a town within two miles of the place of your former dwelling, and the farm which you still occupied. Are you a person from whom or in whom it would have been expected that such guilt as this would have been found? Mr. Watson was the agent of your landlord; he distrained your cattle; he refused you accommodation, and this appears to be the motive of hostility which led to his dreadful doom. The plot was completed at your house. You yourself assisted in the arrangements which preceded the murder; from your house some of the assassins went, and although you yourself took care to be absent from the perpetration of the deed, the law has reached you for the crime—the double crime of being a participator in the murder, and the person who, in order to avenge your quarrel, planned the murder, and thereby assisted in making murderers of others for that foul purpose. When it is found that men of your class are engaged in a system by which persons are induced to commit murder, not for their own quarrels, but for those of others, what class, what individual in society can be safe?—and wherever the circumstances of this case are known, I trust they may impress all with the necessity of uniting for the purpose of arresting the progress of that dreadful crime of assassination, which, I trust, has not yet reached an extent that it may not be met, and by the combined exertions of all, speedily suppressed; but which, if it be not, will make a moral waste of the society in which we live.

I will not prolong this painful proceeding by any further remarks upon this crime. To a person of your class, and with the kind of education which, I doubt not, you have received, I am not certain that any exhortation from me will create impressions, if they do not exist, or add much to those which, I trust, do exist with regard to your repentance for the crime which you have committed. I would rather delegate that duty to others. You will not be denied the opportunity of occasionally, during the time that remains to you, seeing the members of your family. You have a wife, you have a daughter, grown to womanhood, you have young children; you owe to them a deep atonement. You are making the wife a widow—you are making the children orphans! Oh! let me implore of you to give to them, at

least, the comfort that the father and the husband will not go before his Maker hardened in his sins. Take their aid with that of your spiritual instructor, in nourishing in your mind a sincere contrition for your crimes. You may then hope to be prepared for your eternal doom, when the day comes which I am about to announce to you for the execution of the last dreadful sentence of the law.

His Lordship then in the usual form sentenced the culprit to be hanged on the 19th day of February.

The prisoner was then removed from the dock.

The prisoner not being guilty of the actual murder, the CHIEF BARON had him brought to the dock, and again pronounced sentence, omitting that portion in reference to his being buried within the walls of the prison.

Same day.

SENTENCE ON THOMAS M'INERNEY AND THREE OTHERS FOR THE
MURDER OF MARTIN M'MAHON.

Thomas M'Inerney, who was found guilty, and *John Griffin*, *James Guerin*, and *Charles Healy*, who pleaded guilty of the murder of Martin M'Mahon, on the 3rd of January 1848, were then brought up for sentence.

THE CHIEF BARON.

Thomas M'Inerney, you have been found guilty of the crime of wilful murder. Patrick Guerin, John Griffin, and Charles Healy, each of you have pleaded guilty to the same charge. You belonged to a party who assailed the dwelling of a person named Martin M'Mahon, for the purpose of plundering that dwelling of the arms that belonged to its inmates. You went there armed with weapons, by which, being resisted in the perpetration of the outrage which you thought to commit, you became guilty of another outrage, which there appears to be some reason to believe you did not originally meditate. There is some reason for us to believe that although you were armed with fire-arms, you were not provided with ammunition. This appears to be one of those unhappy cases in which men engaged in the prosecution of unlawful designs, and in the commission of unlawful acts, led beyond their intentions, are urged by circumstances to the perpetration of the crime of homicide, which under circumstances such as these, the law treats as murder. According to the law, your offence is not less than murder. What a warning to those who are engaged in the perpetration of such outrages! You cannot become concerned in an unlawful act, an invasion of the person and the dwelling of another by violence, without incurring the risk of being made amenable for the crime of wilful murder, if you inflict death in any struggle that ensues; and you have now, every one of you, forfeited your lives to the law, although when you went to attack that house your intention was only to plunder it of arms. The consequences which ensued have been dreadful to the unhappy victim, to the survivors who belong to his family, and they have been dreadful to you. What a lesson, I repeat, does it not teach to those unhappy people who are engaged in the prosecution of these designs, and in the perpetration of these outrages, in which you and those connected with you appear upon that

occasion to have been concerned ! We are bound to record sentence of death against you. Whether or not the mercy of the Government may be applied to remit that sentence, we of course cannot definitively say. But if that mercy be extended to you, it can only be by a substitution for the punishment which the law awards for this homicide—another punishment, so severe, that it must make you miserable for the remaining portion of your lives. It will lead to the separation of every one of you from his home, his friends, his family, his country, his kindred ; it will lead to your transfer for the remainder of your lives to wretchedness and slavery in another land ! This you did not possibly expect when you attacked that house and plundered it of arms ; and yet this must be your fate, if the law extends mercy to you, for having in that attack slain a human being. It now remains for me to record the sentence of the law against you, and each of you ; and that sentence cannot be less than death.

Same day.

SENTENCE ON JAMES HEARSE AND TWO OTHERS FOR POSTING A
THREATENING NOTICE.

James Hearse, James Duggan, and Laurence Shanahan, convicted on a charge of having posted a notice threatening the life of Crofton Moore Vandeleur, Esq., were next brought up for sentence.

The CHIEF JUSTICE then addressed the prisoners, as follows :—

You have been found guilty for unlawfully posting a certain notice, threatening violence and injury, to wit, death, to Crofton Moore Vandeleur. The notice is set out in the indictment, and there is no doubt that it is of the import which the indictment ascribes to it. Your crime is one of great magnitude; and the providential circumstances which led to your detection and conviction are well deserving the attention of those who think they can commit crime with impunity. A poor man accidentally saw you in the very act of perpetrating the crime of posting the notice. Suspecting it—knowing that he must have seen your wicked act, you afterwards entered his house, dragged him out of bed, and made him take an oath, binding him not to reveal what he had seen. Any one who hears these facts and these circumstances, and who perceives how your detection was brought about, ought to gather from them a lesson of warning and instruction. The sentence I am about to pronounce is one which we, after full consideration of the case, have mitigated to the utmost which our sense of justice, and of what is due to the law of the country, permit us; and I have no hesitation in saying, if it were not that that part of the country in which this offence has been committed has heretofore enjoyed a reasonable degree of tranquillity, and has not been involved in the crimes which overrun the county at large, it would be our duty to transport you. But we trust that a lighter measure of punishment may ensure the great object of this Special Commission, and that the example which we shall make may in its nature and extent be such as to awake all classes to a sense of their duty, to arrest the progress of crime, and to exercise a salutary influence over all persons disposed to violate the law. The sentence of the Court is, that you be imprisoned for twelve months, and kept to hard labour every alternate month.

Same day.

SENTENCE ON MICHAEL M'MAHON FOR CONSPIRING TO MURDER
MATTHEW BOLAND.

Michael M'Mahon, for having, with others, conspired for the purpose of procuring the murder of Matthew Boland, was next sentenced.

The CHIEF BARON.

Michael M'Mahon, you have been found guilty of being engaged in a conspiracy for the murder of a person named Matthew Boland. For that crime the law awards the penalty of death; and that penalty of death it is our duty, imposed by the law, to record against you. For the protection of the lives of the people of this country, the law of the land denounces as criminals, liable to suffer death, those who conspire for the purpose of inflicting death upon others. And what has appeared before us in the progress of this Commission, and what has appeared before us in the investigation of your case, demonstrate the necessity that, for the protection of human life, punishment the severest should be denounced against those who engage in the crime of which the jury have found you guilty. You have been convicted, after a full and most patient inquiry; you have been defended with all the zeal and ability that your Counsel could apply; and the jury, by their verdict, have established, without doubt, your guilt of the crime of which you have been charged. How does it appear that you endeavoured to forward the objects of the conspiracy in which you were engaged with others? By soliciting money for the purpose of hiring an assassin. You went about to solicit the blood-money of murder. How were you arrested in the progress of your crime? I think it right to mention it—it is right it should be known. One of the persons whom you endeavoured to persuade to lend his aid in order to enable you and others to hire an assassin for the murder of Mr. Boland, was induced by the spiritual admonition of his clergyman not only to prevent that man from engaging in the guilt to which you tempted him, but further, to lead to that information which has ultimately brought you to justice. Why was that done? Because that gentleman, under the impression of a most solemn and a most sacred duty, felt that if that moral pestilence were to come within the flock committed to his care, and for which it was his daily duty to offer up his prayers, and to summon, in communion with his, theirs to the living God—he felt it was part of

his solemn and sacred duty to take those human means which the law of the land afford for preventing the spread of this dreadful contagion, and to save his flock from the temporal as well as the eternal mischiefs that must have resulted from its introduction amongst them. I hope and believe, nay, I have no doubt, that others are at this moment engaged in similar efforts. Earnestly do I trust that such efforts will be successful. It is the bounden duty of all, in their different spheres, to employ whatever counsel, advice, influence and authority they possess, to arrest the progress of a crime so frightful. To think that there can exist in a civilised society, or in a society calling itself civilised, a set of persons whose trade is murder—whose business it is to hire themselves out to those who have not the courage to employ their own arm to avenge their own quarrel, but who, for the sake of wreaking their vengeance, or effecting the object of their malignity upon the unsuspecting and defenceless victim of their hatred, will set a price upon his blood! Where such a crime as that prevails, it is impossible to estimate the extent of public and individual calamity which it necessarily entails. It destroys all bonds between class and class—I had almost said between man and man—it must scare away capital, and industry, and enterprise from amongst us; for who would invest capital—who would live in a state of society in which he could not tell the moment he might lose his life at the hands of a hired assassin? We have taken every opportunity that occurred of observing upon this frightful crime, and upon the obligations towards others and towards themselves, of all and every class to unite without the walls of Courts of Justice, and by every possible means of persuasion, of counsel, of advice, as well as of exertion, to bring the perpetrators of guilt to justice. It does appear, in a part of the evidence which was given before us upon your trial, that you betrayed an inclination to attend to the admonition of one of the witnesses who was produced against you, and whom you solicited, at one period, to become a contributor to this blood-money. It was not alleged that you yourself were destined to become the assassin: but your guilt is equal in taking a part towards enabling others to become so. If murder had followed, you would stand there upon another charge; a charge upon the proof of which a person who has just been removed from that spot has received sentence of death, which must be executed. Death, in this instance, did not follow; but, nevertheless, we are bound to record sentence of death against you. Whether or not the mercy of the Executive may extend some degree of extenuation, I know not; but if it do, it will be to substitute another punishment, which

will make you miserable for the remainder of your life. In any event, you must be torn from your family and friends. If you have a wife, as I believe you have, she will be the widow of a living husband ; if you have children, they will be the orphans of a living father ! Such are the consequences which, even in the most mitigated shape, must follow the perpetration of such crimes. We must at present record sentence of death against you.

Same day.

TRIAL OF THOMAS KING AND TWO OTHERS,

FOR ASSAULTING AN HABITATION.

The following jury were sworn:—

Henry Spaight.	F. M. Calcott.
Francis Hoegrave.	John Macbeth.
John Crowe.	John Kerin.
Pierce Creagh.	David Ievers.
Alexander Bannatyne.	George Lysaght.
William Arthur.	T. M. Butterfield.

Thomas King, Martin Molony and John Doogan, were then given in charge on an indictment, that they, on the 4th of December 1847, at ——— in the county of Clare, did maliciously assault the dwelling-house of Patrick Burke.

FIRST WITNESS.

Patrick Burke sworn.—Examined by the *Solicitor-General*.

I live in the parish of Tulla in the county of Clare. I hold some land, and I work as a blacksmith. A party of men came to my house on the 4th of December last. To the best of my belief they came between eleven and twelve o'clock at night. My two sons, three daughters, my wife and myself, were in the house at the time. Patrick and Michael are my sons' names. They came to the house and called one of my sons, Pat. When they got no answer, they struck the door either with their shoulder or with a stone. They broke the window with stones, and the door. My two sons got two pitchforks and stood on either side of the door. I took a spade and stood at the window. One of my daughters took a flesh-fork, and the other stood by the wall and held the candle. She stood with her back to the front wall. The attack continued for half an hour. The party were throwing in stones as fast as they could. They did not get into the house; we kept them out. While we were defending the house the police came up to our assistance. They broke some ware on the dresser with stones. A good deal of stones were thrown into the house. One of my sons was struck, and his head was cut. I had no

opportunity of seeing any of them. I could not know them, the night was so dark.

This witness was not cross-examined.

SECOND WITNESS.

Patrick Cunningham sworn.—Examined by Mr. *Bennett*.

[Witness identified the prisoners.]—I remember the night of the attack on Burke's house. I knew the prisoners a long time before that. I met them in Tulla the night of the attack, at Jane Colburne's public-house. I saw Thomas King and Doogan there. King called for two dandies of punch, and I drank one and Doogan the other. This was between ten and eleven o'clock. We then went to Michael Molony's public-house. We eat some bread and butter and drank a naggin of punch there. We then went up the street and met the prisoner Molony and a boy of the name of Hastings. We met them outside Cusack's public-house. We went in there and drank three naggins there. We then went away, and Hastings came with us as far as his own house, and then left us. We then went to the cross of Tulla, which was my way home, and Doogan and I insisted on going home. King insisted we should go with him and make our way home his road. I know Patrick Burke's house. We went as far as Burke's house, and King said he would not go home until he had revenge out of Burke. We consented, and King and I changed coats. The reason he gave for changing his coat was, to disguise him, because they knew him too well, for he was a neighbour of theirs. I had a barragon coat and King gave me a frieze coat. I had been a servant before this. We four went to Burke's house. We called Pat Burke, and he delayed too long, and we jostled the door and broke it in. The two Burkes were inside with pitchforks, and we commenced throwing in stones and broke the window. The police then came up and arrested Molony and I. When the police arrested us, I was near the door, and Molony was a little bit out from the door. King and Doogan got away. Molony got a prod in the knee at the attack. I knew Burke before. We were tipsy that night.

Cross-examined by Mr. *O'Hea*.

I was drunk that night. What brought you to Tulla that night?—Doogan and I came about Mr. Molony's silver. Magrath was to dispose of it for us. You came in about the robbery you had committed before?—I did. Did you make them drunk?—I did not.

How much money had you?—Six pence. What did you do with it?—I bought bread and butter. Did Doogan bring any charge against you?—He prosecuted me about an ash tree.

THIRD WITNESS.

Richard Colburne sworn.—Examined by Mr. *Plunket*.

I keep a public-house in Tulla. I recollect the night Patrick Burke's house was attacked. Cunningham, King and Doogan were in my house that night.—[Witness identified King.]—I knew King a long time. I saw Doogan that night. I had a slight knowledge of him. They asked for some punch and drank it. They did not sit down. It was about seven o'clock in the evening. The men were sober at that time. They drank the punch in the shop. King was in the house before Cunningham. To the best of my opinion, Doogan came in with Cunningham. The three were drinking together.

This witness was not cross-examined.

FOURTH WITNESS.

John Hastings sworn.—Examined by the *Solicitor-General*.

I am an apprentice to Daniel Brassill, a blacksmith. I know the prisoners.—[Witness identified them.]—I know Pat Cunningham. I remember, one Saturday night in December, meeting those four men. I met them at the end of the street of Tulla, near Miss Cusack's shop. She keeps a whiskey shop. I went into Cusack's house with them. We drank some punch there. We remained there about three quarters of an hour. King had a bridle, and he gave it to me to keep for him until morning. I did not give it to him the next day. We all came out from the house together. When we came out of the public house, I went into my master's house. I know Pat Burke's house. My master's house is at the end of the town. The other men went down the road in the direction of Burke's. Burke's house is about half a mile from that. I heard the next morning of Burke's house being attacked. King wore a frieze coat, and Cunningham a white one.

Cross-examined by Mr. *O'Hea*.

I did not go with the boys. Cunningham had a barragon coat. I was not tipsy. I often went to Burke's. I never went there by night. I heard nothing about going there that night. I left the bridle in my master's house.

FIFTH WITNESS.

Robert Griffin sworn.—Examined by Mr. *Bennett*.

I am a head-constable of police. I was stationed in Tulla the night Burke's house was attacked. I was on duty that night. There were five other police with me. I know Burke's house. We were passing it by, and I observed a light. I went towards the door, and met Cunningham and arrested him. I saw the others rush by. I think there was four of them. Constable M'Dermott arrested Molony. It was raining very heavily, and I was going towards the door for shelter. We were running. The windows of the house were broken. There were several stones in the house. I was obliged to take off my outside coat before they would let me in. That part of the county was disturbed at that time. Cunningham had a frieze coat on him. I got a coat Cunningham said was his. I found it in a garden of Pat Ryan's, about a quarter of a mile from Burke's. I know the prisoner King. I was called by one of Burke's family to go to King's house. I went there, and did not find him at home. I went to King's house about half-past twelve o'clock. I searched after that for him, and did not find him. I did not arrest him.

Cross-examined by Mr. *O'Hea*.

Did not five men run away?—I cannot exactly say; there were four or five. I do not know where Molony was arrested. My impression is there were but four men. I could not exactly say. I could not know any of the men.

To the CHIEF BARON.—They went to the rere of the house, through a small garden. I could not follow them.

SIXTH WITNESS.

Constable *John M'Dermott* sworn.—Examined by Mr. *Plunket*.

I arrested the prisoner Molony. I arrested him convenient to Burke's house. He was coming down one side of the house, and jostled against me, and I arrested him, and he feigned himself dead. He lay back against the wall. The head constable was trying to get into the house at the time. The wall was just beside Burke's house. I was going up the steps to get a little shelter. It was raining very hard, and the head-constable said, "Let us run for shelter." I heard some noise before I came up. Griffin went up the steps before me. I heard the noise about a hundred yards from Burke's. Molony was fifteen or twenty yards from Burke's door. I saw the persons running away. They appeared by the end of Burke's house.

To Mr. *O'Hea*.—Molony let on to be drunk. He was under the influence of liquor.

SEVENTH WITNESS.

Patrick Meaney sworn.—Examined by the *Solicitor-General*.

I live at John Molony's gate-house near Tulla. I remember the morning of Sunday the 5th of December. Doogan came to my house that night. I had gone to bed. I was not fast asleep when Doogan rapped at the door. I had known him before. When first he knocked I made no answer. He knocked again and came to the window. I would not let him in until he had told me his name. He said his name was John Doogan. I knew his voice. The fire was lighting at the time. Burke's house is about a mile and a half or two miles from my house. My house is nearer Tulla. Doogan lived near Mr. O'Callaghan's place. Mr. O'Callaghan's is two miles from me. It is more than one mile from Burke's. It was a very wet night. Doogan remained in the house that night. To the best of my belief, I was not long in bed when he rapped. He is no relation of mine. He never slept in that house with me before. I am not long in that house; I am only in it about three months. I often invited him to my house. I have not had a house of my own for the last six or seven years.

Cross-examined by Mr. *O'Hea*.

Doogan is cousin to my wife. I asked what brought him out so late, and he said two summonses in Tulla, which he went for. He could make my house his way home from Tulla.

EIGHTH WITNESS.

Bridget Ryan sworn.—Examined by Mr. *Bennett*.

I am not married. My father and mother are living. I lived in Coulter with my father in December last. I lived near Burke's. I heard of the attack on his house. I know Thomas King.—[Witness identified the prisoner King.]—He came to my house the night Burke's was attacked. I do not know the hour he came; I think it was about twelve o'clock. I was in bed. He came into the house. My brother was out, and the door was not closed. He stopped there that night. It was a bright moon-light night. Do you know was there rain that night?—I do not know. I got up early next morning to go to mass, and left him in bed in the house. I knew him before that. When I came back he had left the house. I saw him afterwards outside the house about eleven o'clock. I saw a whitish coat, I think

it was barragon, when I came home from mass. He had then left the house. I never saw that coat before. My mother desired my sister to throw it out of the house. I saw it afterwards in the garden where it was left. King is a labourer. He never, to my recollection, slept in the house before.

Cross-examined by Mr. *O'Hea*.

I do not exactly know what hour he came in. I was asleep. I know his speech. I did not see so clear as to know him. He lives in my neighbourhood. He slept with my brother.

NINTH WITNESS.

Richard Ryan sworn, and tendered for cross-examination.

To Mr. *O'Hea*.—I remember the night of the attack on Burke's house. I remember the time King came to our house. It was more than ten o'clock; I think it was later; I cannot say exactly.

To Mr. *Bennett*.—I do not know when he left the house. I left him in the house behind me. I got up before day.

The case here closed.

CHARGE.

The CHIEF BARON.

Gentlemen of the Jury, that an assault was committed on the house of Patrick Burke, on the night in question, there can be no doubt; and with respect to one of the prisoners, there can be little doubt also, as he was arrested on the spot at the time the outrage was committed. The case of the other two prisoners is somewhat different: the evidence which implicates them directly is that of an accomplice. You cannot act upon that testimony unless it is corroborated, not only as to the commission of the offence, but you must be satisfied as to the truth of the whole of his story. If he be corroborated but as to one, you will treat the evidence, as to the other, as if not corroborated at all.

Now, let us see to what extent he is corroborated with respect to King. It does appear that he was drinking with King at the time he states, when his accomplice brought him into company with the persons with whom he committed that offence. That is a circumstance to be taken into your consideration, with a view to the extent to which he is corroborated. The distance of time and place is of

course to be regarded, either as strengthening the force of this corroboration, or otherwise. Now, the distance at which these parties are found in company is but one mile from the scene of the outrage. Again, he tells you that King exchanged coats with him; and it does appear from the evidence of Bridget Ryan, that he was there that night, and left a coat behind him, which was the coat given him by Cunningham. To that extent, therefore, there is corroboration; and it will be for you to say whether or not it is strong corroboration. Hastings also proves that he was in company with the party, and he brings them on the way towards Burke's house; and I should also call your attention to the fact that he was not at home upon the evening in question: that fact is also material for your consideration.

The same observations apply to Doogan. He is found to be away from his dwelling that same night. But with respect to him, except as to his having been drinking in company with the others, there is no other corroboration. You must be satisfied, beyond a reasonable doubt, that the testimony of Cunningham is corroborated to the extent I have stated. You will also consider whether you are satisfied of King's connexion with the crime.

The jury, without leaving the box, returned a verdict of Guilty against all the prisoners.

SENTENCE.

The CHIEF JUSTICE then addressed them as follows:—

John Doogan, Thomas King and Martin Molony, you have been indicted, tried and convicted upon the clearest evidence of the charge preferred against you—a charge founded upon a law which, unless when the country is in a state of lawlessness, is not the law of the land. It is a law brought into operation by the crime and iniquity of the people—a law, the vengeance of which they bring down on their own heads. Your trial has been an instructive one. It is pregnant with admonition. It is an example both to the innocent and to the guilty. You have been indicted and convicted, two of you at least, upon the testimony of a brother in guilt. Cunningham has betrayed you, and you are now the victims of his treachery and your own folly. Why did he betray you? I answer, why did you trust him? You have yourselves given him the power—a power he used as soon as he found it his interest: and so it will be to the end of time with those who place confidence in their companions in guilt. You have thereby subjected yourself to a sentence which may deprive you of your liberty, and may send you into perpetual exile, a punishment for which

persons can but feel a sentiment of commiseration. This is a lesson as to the danger of giving this power to confederates in crime, who are merely true to each other so long as it is their interest, and will be false when it becomes their interest to be so. I also cannot but advert to the heroic intrepidity of that old man. It is impossible not to mark with approbation the intrepid determination with which he armed each member of his family, and for half an hour protected his cabin, which to him was his castle. Base cowards as you were, you dared not to enter the house of a man so armed, not for the purpose of rapine and plunder, but for the purpose of protecting his life and his property from spoliation. The conduct of that family is an example to every one who feels for honor and courage, and for which they are entitled to the gratitude of all who value the peace and tranquillity of the country, and it must strike terror into those engaged in the violation of the law, for sooner or later it will overtake them; its vigilance cannot be eluded. In your case, as you were not armed, we are inclined to mitigate your punishment, which, however, will be a heavy one. You are to be imprisoned for eighteen months, with hard labour.

Same day.

The *Attorney-General* then rose and said:—

My Lords, in rising to move your Lordships that instead of allowing the proceedings under this Commission now to terminate, you may be pleased to appoint some convenient day for the resumption of business in this county, I trust I shall be excused if I glance very briefly at the proceedings which have already taken place. These proceedings fully prove that there is nothing of inaction in those entrusted with the administration of the law. The experience of the past week proves that it is vain for the criminal to expect to escape detection; and that providential circumstances, circumstances that appear to be mere matter of accident on the one hand, or the treachery of associates in guilt on the other, will ultimately bring to justice those who engage in lawless proceedings. There are no less than five human beings now left for execution in this county. The crimes for which these five persons have been sentenced to the extreme penalty of the law are of so dreadful a character, and committed under such circumstances of aggravation, that unfortunately for these persons the law can afford no hope of pardon. There are five other individuals who have also forfeited their lives to the offended laws of their country, but in whose regard it is possible that Government may exercise its prerogative of mercy in their favour. In addition to these, there are so many as ten or twelve sentenced to transportation, for offences of a deep and dangerous character. Those, my Lords, who have been sentenced to death, but whose sentence is not likely to be carried into execution, of course can only expect that it will be commuted to a punishment of a most severe description—a punishment by which they must be for ever separated from their friends, their country, their relatives—from every thing that the human mind can consider dear—from all ties which bind human affections. In addition to these, there are others sentenced to more or less long periods of imprisonment; but even in the adjudication of these sentences, your Lordships have exercised the same clemency that you have in the capital cases already referred to; for the greater number of persons so sentenced to imprisonment might, if your Lordships thought fit, be transported for longer or shorter periods.

There is but one circumstance more to which I need allude. It is this—that in each and every case that has been brought forward at the present Commission, one or more of the persons charged has

been convicted by a jury. This will show the misguided people, if any thing can by possibility, that if they reckoned on a want of firmness in the jurors of this county—if they reckoned on a want of confidence in the persons who came forward here as prosecutors—if they reckoned on a want of preparation, or a weakness in those to whom the Crown has entrusted those prosecutions, they have been grievously mistaken, and that for crime in this county there can be no impunity. At the same time that juries acted thus firmly, no one can doubt that they acted with great consideration and mercy; because in several of the cases in which they did convict some of the persons charged, in the same cases, any of the prisoners about whose guilt a single doubt existed, received from the jurors the benefit of such doubt. Therefore, my Lords, I trust the people will take a lesson from the proceedings already had; and although I, in the discharge of my duty, consider it right and necessary to call upon your Lordships to appoint a convenient day on which to resume the Commission, the people in the meantime may take that course which may not, perhaps, render it necessary that the Commission should be continued. But those to whom her Majesty has entrusted the government of this country have one fixed determination—that is, that as far as they are concerned, no outrage shall be committed in this or any of the counties in which these disgraceful disturbances prevail, without all the powers of the Law and the Executive being brought forward, so that the perpetrators may suffer the punishment they deserve—punishment, not for the sake of punishing the individuals themselves, but in the hope, if possible, of preventing others from engaging in similar practices. I may hope that all classes in society, for their own personal interests, as well as for the character of the country, will co-operate in putting an end to a system by which no individual is safe. I trust that every man, within the sphere of his influence, and to the utmost extent of his power, will give that aid to the law which its effectual administration requires.

Above all, I trust that the Act recently passed will receive that obedience which its importance deserves. That Act calls upon all persons possessed of arms to deliver them up. I implore of the people to act in obedience to the mandates of that Act. I beg of them to deliver up their arms, the detention of which is illegal, and which can only be detained for the purpose of committing crime. It is with a view that offences committed in violation of that Act may be brought to trial, and the offenders immediately punished, that I respectfully beg of your Lordships, instead of allowing the proceedings now to

terminate, to adjourn the Commission in this county to Monday, the 7th of February next.

CHIEF JUSTICE.

Mr. *Attorney-General*, the Commission under which we sit is one in the execution of which it is our duty to attend to the wishes and determination of her Majesty's Government; and, therefore, we have no hesitation whatever in acceding to your application. The powers of the Commission shall be resumed, and for the present we are merely adjourning the proceedings of the Court. Although this course has been taken at the instance of the Crown, I feel bound to say for myself, that every consideration of public interest and of public safety appear to me to dictate and advise the necessity of the step which her Majesty's Government have thought proper to apply for.

The Commission was then adjourned, by proclamation, to Monday, the 7th of February.

D. CORBET, Printer, No. 11 Upper Ormond Quay.

